

**JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION
OF THE VIRGINIA GENERAL ASSEMBLY**

COMMISSION DRAFT

**Review of the
Charitable Gaming
Commission**

December 16, 2002

REVIEW OF THE CHARITABLE GAMING COMMISSION

Commission Draft

This document is the Commission draft of the JLARC report: **Review of the Charitable Gaming Commission**. The draft has been assembled for discussion and factual review. Do not publish or release any material contained in this document, because it is subject to additional verification and editorial review.

Joint Legislative Audit and Review Commission

December 16, 2002

JLARC REPORT SUMMARY

In May 2002, the Joint Legislative Audit and Review Commission (JLARC) approved a study of the Charitable Gaming Commission (CGC). This review was made in response to study requests by the Governor's Chief of Staff, the Secretary of Administration, and the Charitable Gaming Commission itself. The study resolution adopted by JLARC directed its staff to address the following issues:

- Is the organization and management structure for the agency adequate to achieve its statutory objectives?
- Does the Charitable Gaming Commission have the authority and the structure necessary to adequately oversee agency management and operations?
- Does the agency have sufficient resources to implement its statutory mission?
- Does the agency have adequate staffing to implement its statutory mission?

In 1995, the General Assembly created the Charitable Gaming Commission, moving oversight of bingo and other legal forms of charitable gambling from local governments to the State. The Charitable Gaming Commission consists of seven citizen members representing different areas of the Commonwealth. Members serve four year staggered terms. The Commission is classified as a "supervisory" board with the power to appoint the agency head (in this case, the Executive Secretary), approve the agency's budget submission, and approve the rules and regulations governing charitable gaming. The Commission is served by a staff of 26, including the Executive

Secretary. These staff conduct the licensing, training, audit, and enforcement activities of the Commission.

The Charitable Gaming Commission operates primarily with funds received from permit fees submitted by gaming organizations and a 1.125 percent levy on the gross proceeds of regulated organizations. The Commission began fiscal year 2002 with a balance of \$1,990,677. The agency collected \$3,245,825 in fees and interest in FY 2002 and spent \$2,193,265, leaving it with a balance of \$3,043,237.

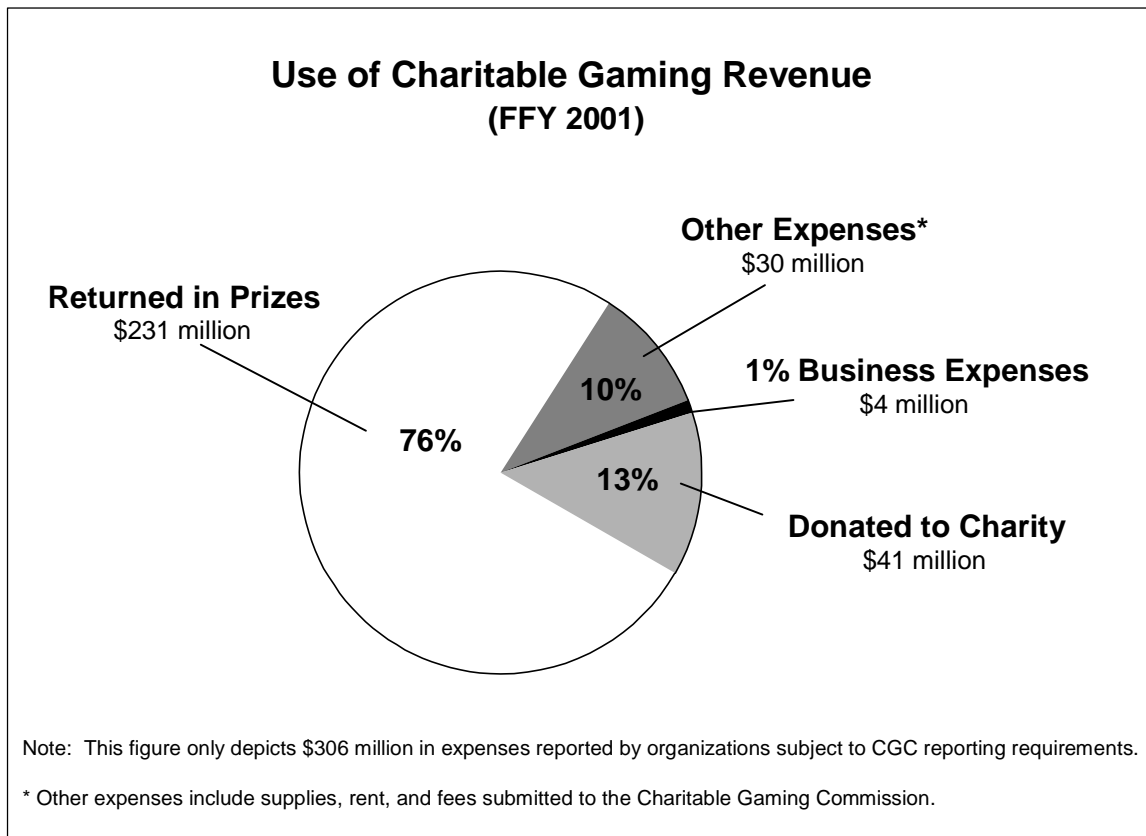
Since its creation, the Charitable Gaming Commission has been largely successful in achieving two of its major objectives: the prevention of gaming fraud and increasing the percentage of gross gaming proceeds that are used for charitable purposes. In the area of enforcement, the CGC has played a role in the successful prosecution of 25 out of 33 criminal cases, providing a credible deterrent to the kinds of gaming fraud that led to its creation. The percentage of gaming proceeds used for charitable purposes has increased from an estimated three percent prior to State control to approximately 13 percent. Despite these successes, the Charitable Gaming Commission needs improvement in a number of areas. Training and audits of charitable organizations are inadequate and staff oversight of organizations is inconsistent. In addition, poor records management makes it difficult to assess some aspects of the organization's performance.

CHARITABLE GAMING IN VIRGINIA

Charitable gambling was first legalized in Virginia in 1973. Largely as a result of local bingo scandals and criminal prosecutions in the early 1990s, however, the General Assembly transferred the regulation of gambling for charitable purposes from local governments to the State. During the 1995 session of the General Assembly, the State centralized the oversight of charitable gaming with the creation of the Charitable Gaming Commission. On July 1, 1996 the Charitable Gaming Commission assumed statewide control over gambling activities conducted by charitable organizations.

Charitable gaming consists principally of bingo games, various forms of instant bingo or “pull-tabs,” and raffles. These games of chance generate substantial revenues for the charities that administer them. In all, 611 charitable organizations were licensed, as of November 2002, to conduct charitable gaming in Virginia. In the fiscal year ending September 30, 2001, an estimated \$307 million of gross proceeds from charitable gaming were collected. (The CGC indicates in its 2001 Annual Report that \$348 million was generated in gaming proceeds. The \$348 million includes revenue from charitable organizations exempt from the regular reporting requirements of the CGC.) An estimated \$40 million (about 13 percent) of the gross proceeds were used for charitable purposes. (Again, the CGC’s 2001 annual report lists approximately \$49 million contributed to charity, which includes charitable contributions from the exempt organizations mentioned previously.) Organizations are required by the *Code of Virginia* to dedicate set percentages of their proceeds to charitable activities, depending on how much money they gross from charitable gaming activities. For

example, an organization operating a bingo game grossing over \$500,000 per year would have to allocate 12 percent or a minimum of \$60,000 to its “use of proceeds” charitable requirement. While 12 percent may not seem to be an exceptional amount, it consists of about half of the “net” of a charitable game. Typically, a game returns about 75 percent of gross to players, thus only about 25 percent of the gross remains for supplies, rent (if applicable), other expenses, and charitable purposes. In FFY 2001, charitable gaming organizations reported approximately \$306 million in various expenses. Charitable gaming funds may be used for prizes, gaming expenses, business expenses, and charitable purposes. The following figure summarizes the expenditure of charitable gaming revenue as reported for FFY 2001.



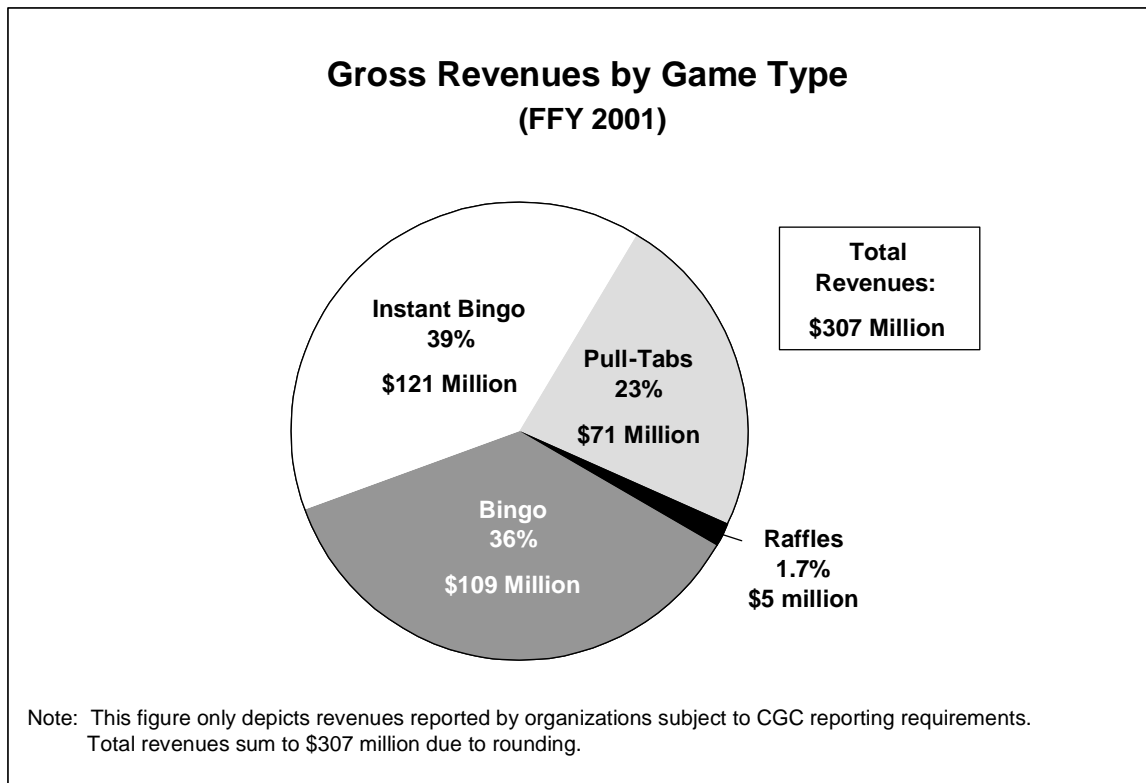
The most common form of charitable gaming is a bingo operation. Players participate by marking off randomly called numbers from bingo cards that are purchased at the game. Multiple rounds and variations of the game can be played. When a player covers the appropriate numbers, she calls out “Bingo!” and is given a cash prize (usually the maximum of \$100). The duration of a gaming session is usually three hours and culminates with a “coverall” game (where all the numbers on the bingo card are marked off) with a maximum prize of \$1,000. The prize amounts are set by law and have not been raised since 1979.

In addition to the traditional bingo game that is played, instant bingo tickets and pull-tabs are sold. Instant bingo and pull-tabs are defined in the *Code of Virginia* as paper cards with pre-printed concealed letters, numbers, or other symbols that determine whether or not the game is a winner. Pull-tabs are a form of instant bingo that are sold only in the private social quarters of organizations. Revenue from the sale of pull-tabs is no longer regulated by the Commission as a result of legislation passed in 2001. As shown in the figure that follows, more revenue is actually raised by instant bingo games and pull-tab games than by traditional bingo.

ABILITY OF THE CHARITABLE GAMING COMMISSION TO FULFILL ITS STATUTORY OBJECTIVES

The Commission’s enforcement efforts have provided a credible deterrent to illegal activities and the Commission has increased the amount of gaming revenues that are available for charitable purposes. Despite this, the JLARC staff review found that the overall structure and staffing of the agency are not

sufficient for it to adequately implement its statutory mission of ensuring uniform compliance with the charitable gaming statutes.



Is the Organization and Management Structure for the Agency Adequate to Achieve its Statutory Objectives?

No, the organization of the agency is problematic, in part because field staff are frequently part-time employees working from their homes. This results in little accountability to central office management, few opportunities for training, and reportedly lower productivity. Additionally, the structure of the agency results in the inefficient use of staff resources. For example, the roles of inspectors and auditors overlap – both are responsible for observing the conduct of charitable gaming activities and for examining the financial records of organizations.

The agency's lack of a records management policy and its poor record keeping protocols also contribute to management inadequacy. Agency records

are not maintained in a central location and are not easily accessed by all staff. The accuracy of agency records is also inconsistent.

While charitable gaming organizations largely report satisfaction with the Commission's oversight of charitable gaming activities, other evidence indicates that the Commission's ability to provide effective oversight is frustrated by its inadequate attention to providing systematic training opportunities and support to charitable gaming organizations. The lack of effective training has resulted in focusing on unintentional violations of the *Code* and regulations when resources should be concentrated on investigations into deliberate wrongdoing. Adequately ensuring that charitable gaming organizations understand the requirements of the statutes and regulations should be the first step in enforcing compliance with these provisions.

The management structure of the agency is also problematic. The appointment of the Executive Secretary by the seven-member part-time supervisory board results in this position having dual accountability to the board and to the Administration. The supervisory board only meets six times a year, at times without full attendance from the members. Members lack knowledge or expertise in charitable gaming and are highly dependent on their staff. Staff turnover is also a problem. The Commission has appointed four executive secretaries since its creation, each serving an average of less than two years. Partially as a result of this turnover in agency administration, the Commission has been inconsistently managed.

Additionally, this review found that the agency's protocols with respect to regulating the gaming community have been inconsistent with the requirements of the *Code of Virginia* and that there are improvements needed in the consistency and uniformity with which the Commission implements and follows its own procedures.

Does the Charitable Gaming Commission Have the Authority and the Structure Necessary to Adequately Oversee Agency Management and Operations?

Yes, the Commission does have adequate authority to oversee agency management and operations, but its structure impairs its ability to exercise this authority. Although the Commission is set up in statute as a supervisory board, because its members serve on a part-time basis, are situated throughout the State, and only meet six times a year, the Commission has not effectively utilized its supervisory power over the agency. Indeed, members lacked an understanding of their authority to appoint the Executive Secretary, one of their primary duties. Additionally, members rely heavily on the agency staff and the Executive Secretary to update them on the status of charitable gaming in the State. Further, some members acknowledge that the agency has undertaken actions that should have been supervised more closely by the board, such as drafting legislation.

Does the Agency Have Sufficient Resources to Implement Its Statutory Mission?

No, the Commission does not currently have access to sufficient resources to implement its statutory mission. Although the agency reports

having a \$3 million balance in its current budget, it is restricted from using these resources due to actions taken in response to the current fiscal crisis faced by the Commonwealth. Additionally, the agency's budget has been reduced by 22 percent in both FY 2003 and FY 2004. This has caused the agency to eliminate its training efforts, restrict other activities, reduce staff hours, and lay off personnel.

Does the Agency Have Adequate Staffing to Implement Its Statutory Mission?

No, the agency does not have adequate staffing at this time. The reduction of both the FY 2003 and FY 2004 budgets by 22 percent forced the Commission to eliminate four full-time positions. This resulted in laying off two classified personnel. To meet the demands of the budget reduction, the agency has deferred hiring additional employees.

In particular, the Commission lacks sufficient enforcement and audit staff to fulfill its statutory mission. The enforcement and audit functions are essential in ensuring uniform compliance with the charitable gaming statutes. The enforcement division lost two full-time special agents as a result of budget reductions, leaving the agency with one part-time and two full-time agents to handle the 14 open criminal investigations and respond to other reported problems. The Commission also has only two full-time and two part-time field auditors to analyze the financial records of the more than 600 organizations identified as needing an audit. In 2002, the Commission audited a total of 70 organizations, most of which were identified in a previous year as needing an audit. As shown on the following table, Commission staff have audited only 26 of

632 organizations newly identified in calendar year 2002 as needing an audit.

This is problematic, as most completed audits show some degree of noncompliance with gaming statutes or regulations. Out of 75 audits conducted between October 2001 and September 2002, 54 organizations were found to be underreporting revenues by an average of \$116,141, or a total of \$6.3 million.

Such underreporting represents an opportunity for fraud and the potential loss of substantial revenues for charitable purposes.

Audits Completed of Organizations Newly Identified for Financial Audits			
Audit Reason	Number Identified	Number Audited	Total Outstanding Audit Needs
Excessive Prize Payouts	76	0	76
Excessive Player Discounts	25	5	20
Insufficient Charitable Giving	141	21	120
Never Audited by the CGC	390	0	390
Total	632	26	606
<p>Note: CGC staff have indicated that there is some overlap among these categories, but were unable to estimate the extent of this overlap. Therefore, the actual number of organizations identified as needing an audit in this table is greater than the number of organizations currently holding a charitable gaming permit.</p> <p>Source: JLARC staff analysis of Charitable Gaming Commission data.</p>			

Three Structural Options Proposed

In addition to the specific recommendations included in the main body of the report, JLARC staff developed three policy options that the General Assembly may wish to consider to address the deficiencies identified during the

study. Under the first option, the State would continue to have the Commission operate as it is currently structured since it has been relatively successful in meeting the overall goals of managing charitable gaming activities. Under the second option, the Commission would be re-designated as an advisory board, with the appointment of the Executive Secretary transferred to the Governor. Under the third option, given the similarities between the two agencies, the Charitable Gaming Commission would be merged with the Lottery Department to form a "Department of Charitable Gaming and the Lottery." Advantages and disadvantages of each option are discussed in Chapter IV of this report.

***Option(1).* Continue the present structure of the Charitable Gaming Commission, but make improvements to the management of the agency.**

***Option(2).* Modify the Charitable Gaming Commission governance structure by designating it as an advisory board, with the appointment of the Executive Secretary made by the Governor.**

***Option(3).* Consolidate the Charitable Gaming Commission with the State Lottery Department.**

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COMMISSION DRAFT

NOT APPROVED

I. Introduction

In May 2002, the Joint Legislative Audit and Review Commission (JLARC) approved a study of the Charitable Gaming Commission (CGC). This was done in response to requests from the Governor's Chief of Staff, the Charitable Gaming Commission, and the Secretary of Administration. The Charitable Gaming Commission, under the Office of the Secretary of Administration, is the State agency responsible for regulating all charitable gaming in the Commonwealth. Although charitable gaming has been authorized for fundraising purposes in Virginia since 1973, the State began regulating it through the CGC in July 1996.

The Charitable Gaming Commission's performance in meeting its statutory mandate to regulate the charitable gaming industry in Virginia has not been reviewed since the creation of the agency. On March 28, 2002, following a study request by the Governor's Chief of Staff, the Charitable Gaming Commission passed a resolution requesting a JLARC review of its "effectiveness in executing its statutory and regulatory responsibilities." JLARC, in turn, directed its staff to examine the organization and management structure of the CGC, as well as its resources and staffing. The JLARC study resolution is included in Appendix A.

This report presents JLARC staff's review of the management, structure, resources, and staffing of the Charitable Gaming Commission. This chapter provides an overview of the charitable gaming industry and the history of charitable gaming regulation in the Commonwealth. It discusses several issues

identified as pertinent to the Commonwealth's regulation of charitable gaming, and outlines the approach used to execute this study.

CHARITIES AND CHARITABLE GAMING

Despite a longstanding prohibition against gambling in the Commonwealth, recreational gambling in the form of bingo and raffles was legalized by the General Assembly in 1973 as a means for charitable organizations to generate revenue. Generally, charitable games in Virginia consist of bingo, raffles, and various forms of "instant bingo," known as pull-tab games. A charitable organization is defined in §18.2-340.16 of the *Code of Virginia* as:

...a volunteer fire department or rescue squad or auxiliary unit thereof...an organization operated exclusively for religious, charitable, community or educational purposes, an association of war veterans or auxiliary units thereof organized in the United States, a fraternal association or corporation operating under the lodge system, a local chamber of commerce, or a nonprofit organization...

Most charitable organizations are eligible for federal tax-exempt status with the Internal Revenue Service under section 501c of the Internal Revenue Code.

According to the *Gaming Publication for Tax-Exempt Organizations* produced by the Internal Revenue Service, organizations most likely to engage in charitable gaming are:

- 501c(3) organizations operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, to foster national or international amateur sports competition, or prevention of cruelty to children or animals;

- 501c(4) civic leagues, social welfare organizations, and local associations of employees;
- 501c(8) fraternal beneficiary societies, orders or associations;
- 501c(10) domestic fraternal societies, orders or associations; and
- 501c(19) veterans' organizations or their auxiliary units.

All of the above organizations can be found among the 611 organizations licensed by the Charitable Gaming Commission as of November 2002.

Charitable Gaming in Virginia

According to the American Gaming Association, 45 states and the District of Columbia reported approximately \$2.4 billion in revenue from the conduct of charitable gaming in 2000. Since it was legalized by the General Assembly in 1973, charitable gaming in Virginia has grown into an industry with revenues most recently reaching approximately \$307 million in 2001. In 2001, 123 games reported gross revenues in excess of \$1 million. (The Charitable Gaming Commission follows the federal fiscal year (FFY). Financial data in this report generally cover the period October 1, 2000 through September 30, 2001. Data are not yet available for FFY 2002.)

Charitable gaming in Virginia has been regulated by the State since the Charitable Gaming Commission began operating in 1996. Statewide regulation followed a 1993-1994 joint subcommittee study of problems with local regulation. In establishing an oversight agency for charitable gaming, Virginia became one of 36 states that transferred regulation from local to state government. One of the primary goals of the CGC is to increase the amount of

gaming funds contributed to charitable purposes. To that end, §18.2-340.19 of the *Code of Virginia* requires that in order to conduct these forms of gaming, organizations must contribute a certain amount of their gaming proceeds to charitable purposes. Prior to State regulation, the reported percentage of gaming proceeds being allocated for charitable purposes was less than three percent. In FFY 2001, the Charitable Gaming Commission estimated that 13.3 percent of the gaming proceeds were committed to charitable purposes.

The Games. Charitable gaming encompasses those games of chance, such as bingo games and raffles, which are conducted by non-profit organizations as fundraising mechanisms (Figure 1). Prize amounts are limited by §18.2-340.33 of the *Code of Virginia* and can either be based on the attendance at a gaming session or a guaranteed amount set beforehand by the organization. The maximum jackpot limit for bingo games is \$1,000, which has been in effect since 1979.

Charitable gaming activities are organized and managed by volunteers, as §18.2-340.33 of the *Code of Virginia* prohibits organizations from compensating “any person for the purpose of organizing, managing, or conducting any charitable games.” Organizations may have one or more game managers responsible for organizing and managing the games, with supervision over other volunteers serving in various capacities during a gaming session. For example, organizations that offer bingo games use volunteers as “bingo callers” who announce the numbers drawn in a bingo game.

Figure 1**Forms of Charitable Gaming**

“Bingo” is defined as:



...a specific game of chance played with (i) individual cards having randomly numbered squares ranging from one to seventy-five, (ii) Commission-approved electronic devices which display facsimiles of bingo cards and are used for the purpose of marking and monitoring players' cards as numbers are called, or (iii) Commission-approved cards pursuant to subdivision 13 of §18.2-340.18, in which prizes are awarded on the basis of designated numbers on such cards conforming to a predetermined pattern of numbers selected at random. Such cards shall have five columns headed respectively by the letters B.I.N.G.O.

The bingo jackpot limit is \$1,000 per day, per organization.

“Instant Bingo,” “Pull-tabs,” or “Seal Cards” are defined as:

...individually prepackaged cards made completely of paper or paper products, with winners being determined by the appearance of preprinted concealed letters, numbers or symbols that must be exposed by the player to determine wins and losses...that have been designated in advance as prize winners.

The instant bingo prize limit is \$500.



A raffle is defined as:

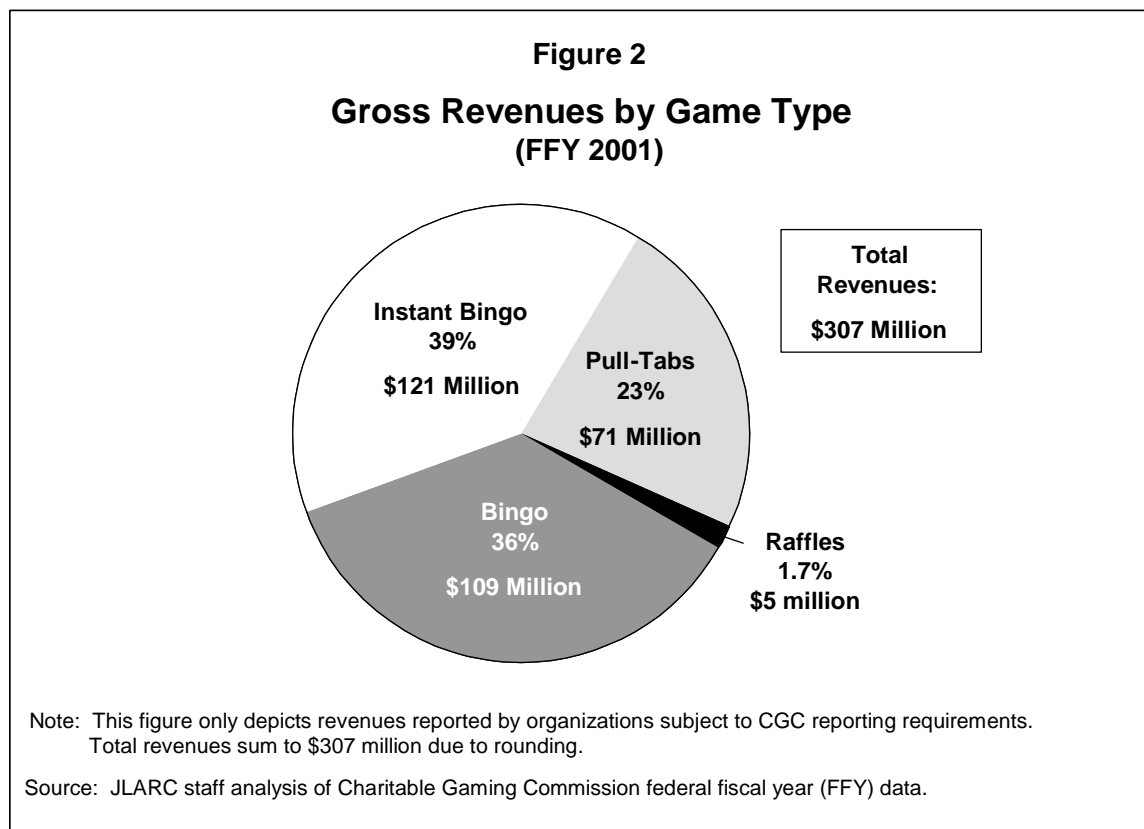


...a lottery in which the prize is won by (i) a random drawing of the name or prearranged number of one or more persons purchasing chances or (ii) a random contest in which the winning name or pre-assigned number of one or more persons purchasing chances is determined by a race involving inanimate objects floating on a body of water, commonly referred to as a “duck race.”

Source: *Code of Virginia*, Sections 18.2-340.16 and 18.2-340.33.

The raffle prize limit is \$100,000.

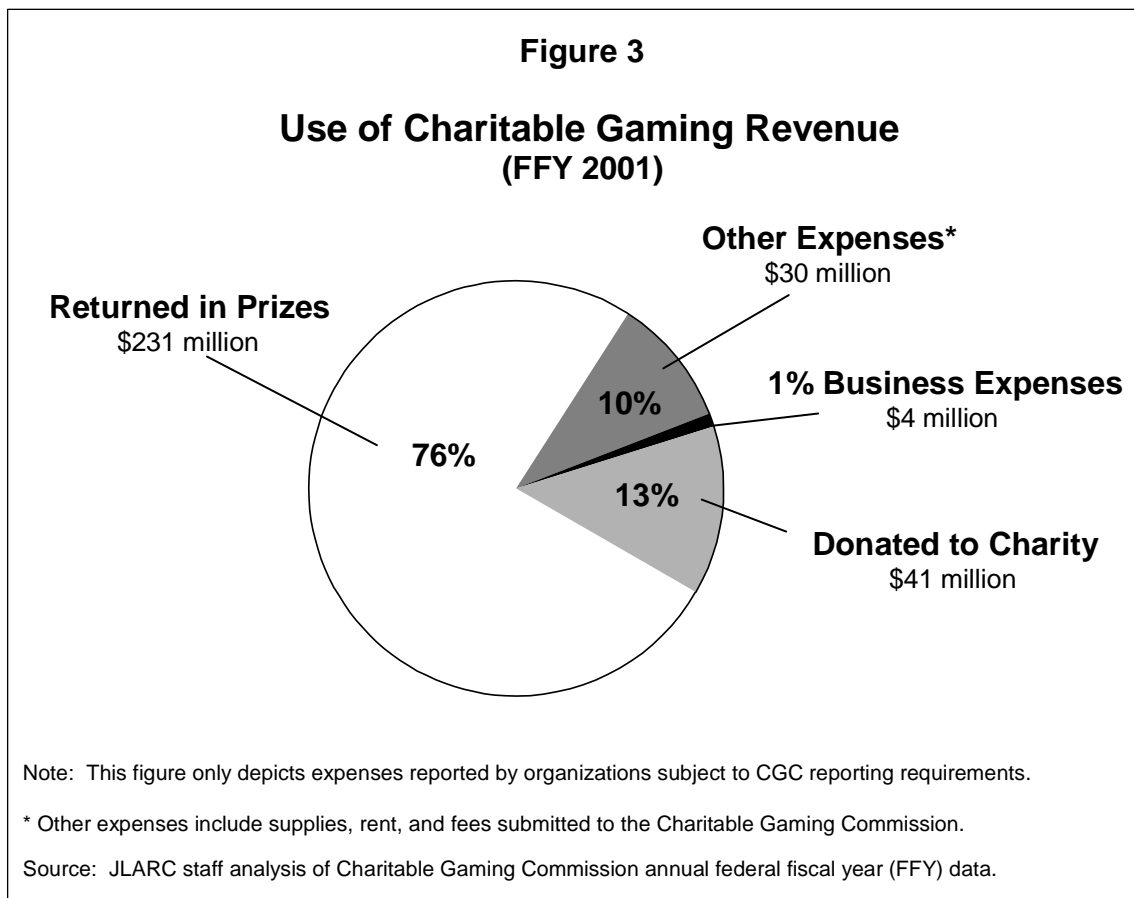
Although traditional bingo games are the best known form of charitable gaming, more revenue is actually generated by “pull-tabs” and “instant bingo” (Figure 2). The *Code of Virginia* provides that these cards may be sold by volunteers or dispensed by mechanical or electronic equipment. Although instant bingo and pull-tab games are essentially the same, they are reported separately. According to the *Code*, “pull-tabs or seal cards...may be sold only upon the premises owned or exclusively leased by the organization and at such times as the portion of the premises in which the pull-tabs or seal cards are sold is open only to members and their guests.” Commission regulations provide that “instant bingo cards shall only be sold in conjunction with a regular bingo session” and “no instant bingo sales shall take place more than two hours before or after a session.” These instant games generated 62 percent of charitable gaming



revenues in FFY 2001. Charitable organizations generally conduct both regular bingo and some form of instant bingo.

Uses of Charitable Gaming Revenue. In FFY 2001, the Charitable Gaming Commission reported that nearly \$307 million was generated from charitable gaming across the State by organizations subject to CGC reporting requirements. In that year, these charitable gaming organizations also reported approximately \$306 million in various expenses. The revenue generated from charitable gaming is used to meet a variety of obligations or commitments. Charitable gaming funds may be used for prizes, gaming expenses, business expenses, and charitable purposes. (The CGC 2001 Annual Report indicates that \$348 million in revenue was generated from charitable gaming activities during FFY 2001. This figure includes revenue generated from organizations exempt from the CGC reporting requirements. The distinction between exempt and non-exempt organizations is discussed in more detail later in Chapter I.)

Gaming expenses are defined by §18.2-340.16 of the *Code of Virginia* as “prizes, supplies, costs of publicizing gaming activities, audit and administration or permit fees, and a portion of the rent, utilities, accounting and legal fees and such other reasonable and proper expenses as are directly incurred for the conduct of charitable gaming.” According to the Charitable Gaming Commission, approximately 75 percent of gross receipts are typically returned to the players as prize money. In FFY 2001, \$231 million was returned in prizes and approximately \$30 million was spent on other gaming expenses, such as supplies, rent, and fees submitted to the CGC. Figure 3 shows the uses



of charitable gaming revenues for FFY 2001 by organizations subject to CGC reporting requirements.

Gaming revenue can also be used to pay for certain “reasonable and proper business expenses”, defined by §18.2-340.16 of the *Code of Virginia* as:

...business expenses actually incurred by a qualified organization and not otherwise allowed under this article or under Commission regulations on real estate and personal property tax payments, travel expenses, payments of utilities and trash collection services, legal and accounting fees, costs of business furniture, fixtures and office equipment and costs of acquisition, maintenance, repair or construction of an organization’s real property...salaries and wages of employees whose primary responsibility is to provide services for the principal benefit of an organization’s members shall not qualify as a business expense.

In 2001, organizations reported spending \$4.3 million on such business expenses.

Finally, in order to qualify for a permit from the Charitable Gaming Commission to conduct gaming activities, an organization must agree to commit a specified amount of its gaming revenue to charitable purposes. Section 18.2-340.19 of the *Code of Virginia* states that permit holders must use a predetermined amount of their gross receipts from charitable gaming for:

...those lawful religious, charitable, community or educational purposes for which the organization is specifically chartered or organized or those expenses relating to the acquisition, construction, maintenance or repair of any interest in real property involved in the operation of the organization and used for lawful religious, charitable, community or educational purposes.

In 2001, after the deduction of prizes and expenses, the Charitable Gaming Commission reported that \$40,589,515 was donated to charity, which is approximately 13.3 percent of all sales. It should be noted, however, that the charitable organization *itself* may be the charity for which proceeds are used, and mortgage payments made by organizations that purchase their own facilities may be counted as charitable giving.

Charitable Gaming Suppliers and Supplies. The *Code of Virginia* grants authority to the Charitable Gaming Commission to regulate persons who sell or lease gaming supplies to organizations qualified to conduct charitable gaming in Virginia. These persons, defined as “suppliers,” must annually apply for and receive registration certificates from the Commission. As part of the annual registration process, suppliers must pay a \$500 fee.

Charitable gaming supplies are defined in §18.2-340.16 of the *Code of Virginia* as:

...bingo cards or sheets, devices for selecting bingo numbers, instant bingo cards, pull-tab cards and seal cards, and any other equipment or product manufactured for or intended to be used in the conduct of charitable games.

The *Code* does not define items that are incidental to the conduct of charitable gaming activities (such as “markers, wands, or tape”) as gaming supplies.

Regulations established by the Commission require that all bingo cards, pull-tab cards, and instant bingo cards have serial numbers printed on them by the manufacturers to prevent fraud. For example, a gaming organization will verify the serial number of the bingo card presented by a player who claims to have won a game, to ensure that the individual has a legitimate winning card.

Charitable Gaming Facilities. The *Code of Virginia* does not specify the type of facilities in which organizations may conduct their charitable gaming activities. As a result, qualified organizations generally employ one of three options for obtaining a gaming facility: (1) using or purchasing their own facility, (2) renting a facility from another qualified organization that conducts charitable gaming, or (3) renting a facility from a commercial landlord.

Large organizations primarily created for social or civic purposes usually use their own facilities for charitable gaming. Examples of these organizations include international or national fraternal lodges (such as the Loyal Order of Moose or Fraternal Order of Elks) and veterans’ organizations (such as the Veterans of Foreign Wars) that own their lodges or halls. Smaller

organizations usually rent from either another charitable organization or from a commercial landlord.

Generally, there are three major groups associated with charitable gaming. These groups are the charitable organization conducting the game, the organization or landlord providing the game site, and the supplier of serially-numbered games and specialized gaming equipment. Exhibit 1 describes the regulatory details for the three major actors within the charitable gaming industry and the role of the Charitable Gaming Commission in ensuring their compliance with State laws and regulations. (This issue is discussed further in Appendix B.)

REGULATORY HISTORY OF CHARITABLE GAMING IN VIRGINIA

The General Assembly legalized charitable gaming in 1973 and authorized local governments to regulate organizations that conduct charitable gaming activities. However, due to several well-publicized cases of wrongdoing by individuals involved with charitable gaming, the 1995 General Assembly enacted legislation that transferred control of the industry from the localities to the State. The 1995 General Assembly also established the Charitable Gaming Commission as the State agency responsible for regulating organizations involved with charitable gaming.

The Charitable Gaming Commission is an executive branch agency located under the Office of the Secretary of Administration. It is governed by a supervisory board that consists of seven part-time citizen volunteers who are appointed by the Governor. As discussed later in this chapter, the Commission appoints an Executive Secretary who serves as the CGC staff director.

Exhibit 1		
Regulations for Gaming Industry Groups		
Gaming Organizations	Landlords	Suppliers
<p><u>Role:</u></p> <p>Charitable organizations conduct gaming as a fundraising mechanism</p> <p><u>Commission Oversight?</u></p> <p>Yes</p> <p><u>Regulatory Provisions:</u></p> <p>Must obtain permits from CGC annually, and submit a \$200 fee</p> <p>Must use volunteers who are bona fide members of the organization to operate games</p> <p>Must contribute a certain percent of proceeds to charity</p> <p>Must submit financial reports to CGC accompanied by audit fee</p> <p>Must maintain records of prizes and prize winners</p>	<p><u>Role:</u></p> <p>Rent premises to organizations that do not already have access to a location to conduct games</p> <p>Some commercial bingo halls are reported to be already equipped by landlords for gaming, making them more attractive to organizations</p> <p><u>Commission Oversight?</u></p> <p>No*</p> <p><u>Regulatory Provisions:</u></p> <p>Cannot participate in gaming in any way</p> <p>Cannot sell/lease supplies to organizations</p> <p>Cannot require organizations to use a particular supplier</p> <p>Cannot charge rent in excess of fair market rental value</p> <p>Cannot base rent on gross receipts or on attendance</p> <p>Cannot hold gaming on a single premise more than two days per week (Charitable gaming can be held four days per week in premises that are owned by nonprofit organizations or local governments)</p> <p>*Regulatory provisions for landlords are in the statute, but the CGC does not have oversight responsibility for this group</p>	<p><u>Role:</u></p> <p>Sell or lease gaming supplies to organizations</p> <p><u>Commission Oversight?</u></p> <p>Yes</p> <p><u>Regulatory Provisions:</u></p> <p>Must annually obtain permits from the CGC, and submit a \$500 fee</p> <p>Must document the sale of supplies to organizations</p> <p>Must maintain copies of invoices for three years</p>
Source: JLARC staff analysis of the <i>Code of Virginia</i> 18.2-340.15-37 and Section 11 of the Virginia Administrative Code 15-22-100.		

State Regulation of Charitable Gaming, 1973-1995

From its legalization in 1973 until 1995, charitable gaming in the Commonwealth was regulated by local governments. However, prompted by a series of allegations of wrongdoing by organizations and the property owners from which these organizations leased their facilities, the General Assembly conducted a joint subcommittee investigation in 1993 and 1994 into the conduct of charitable gaming in the Commonwealth. A specific impetus for the subcommittee's review was a much publicized special grand jury investigation of bingo abuses in Henrico County in 1992. As a result of testimony presented to the subcommittee regarding the lack of uniform administration of charitable gaming in localities in the Richmond area, the subcommittee recommended that charitable gaming be regulated by the Commonwealth.

The subcommittee report led to the passage of Senate Bill 1020 in 1995, which established the Charitable Gaming Commission. By enacting legislation that gave the State plenary power to regulate charitable gaming, the General Assembly removed control of the industry from the localities. While transferring control of the industry from local governments to the State, this new legislation did not substantially alter the provisions of the charitable gaming statutes in effect prior to 1995. The newly created statutes were very similar to those that were repealed in terms of permit and financial reporting requirements, fees levied against the gaming organizations, and various restrictions on the conduct of charitable gaming.

Regulation of charitable gaming by the State reflected the fact that since 1973, the growing popularity of gaming and the associated potential for

fraudulent activity had necessitated a trend toward increased statutory controls of the industry. Substantial changes occurring within charitable gaming legislation from its legalization in 1973 to regulation by the Commonwealth in 1995 are highlighted in Exhibit 2.

Charitable Gaming Legislative History, 1995 – Present

Since the General Assembly created the Commission in 1995, the legislature has annually considered numerous bills to improve, reduce, or eliminate its operations. During the 1997 and 2001 sessions, legislation was submitted to abolish the Charitable Gaming Commission and restore the administration and enforcement of charitable gaming laws to local government bodies. Such legislation indicates that State oversight has not been well received by all organizations. In fact, the Commission chairman wrote in the agency's 1999 Annual Report that "any candid assessment of the Commission cannot ignore the fact that at least in some regions of the Commonwealth there is a deep resentment of the Commission's role in regulating charitable gaming." Exhibit 3 summarizes successful charitable gaming legislation introduced since the creation of the CGC.

In 2000, House Bill 811 was passed to amend the charitable gaming statutes so that, until July 1, 2001, the Charitable Gaming Commission could not deny, suspend, or revoke permits of organizations that failed to meet the charitable donations requirement as long as they were conducting gaming in a rented facility prior to January 1, 2000. As noted earlier, this moratorium was extended in both the 2001 and 2002 sessions of the General Assembly. As a

Exhibit 2**Evolution of Charitable Gaming Law While Under Local Control**

<u>Year</u>	<u>Amendments to the Charitable Gaming Statutes</u>
1973	Charitable gaming legalized in Virginia. Regulation left to local governments.
1977	Rentals limited to current fair market rental value. Rent cannot be based on proceeds of games.
1978	House Joint Resolution 155 directs study of State's bingo laws.
1979	As a result of the joint subcommittee study, the bingo statutes were repealed and replaced with the framework for what is now the current statute. Two-day per week gaming limit for organizations imposed. New statute clarified that an organization's total "gross receipts" should include money given back to players in prizes. Restrictions placed on prize amounts.
1981	Required records to be kept for three years on dates bingo was played, attendance at each day, and daily receipts and prizes.
1982	Expenses for "real property" used for gaming purposes allowed to be counted as charitable giving.
1984	If building/premise is owned by a tax-exempt organization, games could be conducted in that facility no more than four days a week.
1992	Organizations required to have at least 50 percent of their membership to consist of Virginia residents. Cities with population between 200,000 and 210,000 may require permitted organizations to use a predetermined percentage of proceeds for charity.
1993	Bars persons with felony convictions from operating bingo games.
1993	1993-1994 joint subcommittee study of Virginia's bingo and raffle statutes.
1995	Creation of the Charitable Gaming Commission. Local oversight of charitable gaming ends effective July 1, 1996.
Source: JLARC staff analysis of the Virginia Acts of Assembly 1973-1995.	

Exhibit 3 Major Amendments to Charitable Gaming Law Since the Commission's Creation	
<u>Year</u>	<u>Amendments to the Charitable Gaming Statutes</u>
1995	Exempts volunteer fire departments and rescue squads and organizations grossing less than \$25,000 from charitable gaming from submitting regular permit applications, paying permit fees, and from submitting regular financial reports.
1997	Exempts organizations realizing \$25,000 or less from notifying the CGC of their intent to conduct gaming or complying with any charitable gaming regulations.
2000, 2001, 2002	No sanctions can be placed against organizations renting facilities prior to January 1, 2000.
2001	Sale of pull-tabs in private social quarters not counted in gross receipts.
2002	Defined "fair market rental value" based on Virginia Supreme Court definition.
Source: JLARC staff analysis of the Virginia Acts of Assembly 1995, 1997, 2000, 2001, and 2002.	

result, organizations that rented bingo facilities prior to January 1, 2000 have not had to meet charitable "use of proceeds" requirements for three years. However, organizations that began renting facilities after this date are not exempt from this requirement.

In 2001, Senate Bill 1177 amended the charitable gaming statutes to exempt the proceeds of charitable gaming in the social quarters of organizations "open only to members [of the organization] and their guests" from oversight by the Charitable Gaming Commission. These organizations do not have to report their revenue from gaming in private social quarters to the CGC, nor do they have to account for the use of those proceeds. If organizations selling pull-tabs in private social quarters do not generate gross revenue in excess of \$25,000

from other gaming activities, they are exempt from CGC regulatory oversight under §18.2-340.23 of the *Code of Virginia*. The 2001 General Assembly also directed the CGC to determine how to calculate the fair market rental value of commercial gaming facilities. Subsequently, the CGC developed two fair market rental value formulas, but the General Assembly decided against adopting either formula.

Senate Bill 571 was introduced during the 2002 session of the General Assembly. This bill would have amended the charitable gaming statutes so that the CGC Executive Secretary would be appointed by the Governor instead of the Commission, essentially changing the Commission from a supervisory board as defined in §2.2-2100 of the *Code* to an advisory board. This legislation was not successful. The 2002 General Assembly also passed House Bill 931 which amended §18.2-340.16 of the *Code of Virginia* by defining “fair market rental value.”

Organizations Authorized to Conduct Charitable Gaming in Virginia

Data obtained from the Charitable Gaming Commission indicate that, as of November 2002, there were 611 organizations authorized by the CGC to conduct charitable gaming in Virginia. These organizations are classified as either “exempt” or “non-exempt” organizations, with the majority (479) being non-exempt. Organizations may be classified in five tiers, from exempt organizations grossing less than \$25,000 per year (tier 1) to non-exempt organizations grossing over \$500,000 per year (tier 5).

The specific regulations applied to exempt and non-exempt organizations are shown in Table 1. Non-exempt organizations are divided into three tiers based on the amount of revenue grossed from charitable gaming activities. The percent of an organization's proceeds that must be committed to charitable purposes is based on their gross revenue, as defined in Commission regulations. Section 18.2-340.19.1 of the *Code of Virginia* gives the Commission the authority to specify these charitable requirements based on "a graduated scale of percentages of gross receipts."

Exempt organizations include those that anticipate the annual proceeds from charitable gaming to be less than \$25,000. According to §18.2-340.23 of the *Code of Virginia*, these organizations are not required to obtain permits from the CGC prior to gaming and are exempt from the financial reporting requirements placed on organizations with higher charitable gaming revenue. They are, however, subject to audit and inspection by the CGC to ensure that exempt organizations are complying with the charitable gaming statutes. Because these organizations are not required to notify the CGC of their intent to conduct charitable gaming activities, the number of these organizations is not known.

Section 18.2-340.23 of the *Code of Virginia* also exempts volunteer fire departments and rescue squads from certain requirements of the charitable gaming statutes and regulations, provided that these organizations notify the CGC of their intent to conduct charitable gaming. These organizations must receive notification of their exempt status prior to operating games, but are

Table 1

Use of Proceeds and Reporting Requirements for the Five Categories of Charitable Gaming Organizations

Tier	Status	Gross Revenue	Required Percent of Gross Revenue to be Used for Charitable Purposes ¹	Subject to Audit/Investigation? ²	Application/Reporting Requirements
5	Non- Exempt	\$500,000 +	12%	Yes	<ul style="list-style-type: none"> ■ Obtain gaming permit ■ File quarterly reports, if applicable ■ File annual financial report ■ Submit audit fee at 1.125 percent of gross revenue
4	Non- Exempt	\$150,000- \$500,000	10%	Yes	<ul style="list-style-type: none"> ■ Obtain gaming permit ■ File quarterly reports, if applicable ■ File annual financial report ■ Submit audit fee at 1.125 percent of gross revenue
3	Non- Exempt	< \$150,000	5%	Yes	<ul style="list-style-type: none"> ■ Obtain gaming permit ■ File quarterly reports, if applicable ■ File annual financial report ■ Submit audit fee at 1.125 percent of gross revenue
2	Exempt Volunteer Fire/Rescue	\$25,000 +	According to Gross Revenue as Illustrated in Tiers 3-5	Yes	<ul style="list-style-type: none"> ■ File "Exempt Organization Notification" prior to gaming ■ Annually report gross gaming revenue and gross revenue contributed to charity
1	Exempt	< \$25,000	None	Yes	<ul style="list-style-type: none"> ■ Organizations expecting to gross under \$25,000 are not required to obtain a permit, but must maintain records for audit.

Source: JLARC staff analysis of Section 11 of the Virginia Administrative Code 165-22-100 and the *Code of Virginia* §18.2-340.15 37.

¹These specific percents are defined in the Charitable Gaming Commission's regulations, but are not delineated in statute.

²See *Code of Virginia* §18.2 -340.23 (C).

exempt from the permit requirements and associated fees as well as the financial reporting requirements placed on other organizations. Each of these organizations must, however, file a resolution of the board of directors stating that the organization has complied with the charitable gaming statutes and is subject to audit and inspection. Currently, there are 132 of these organizations approved by the CGC to conduct charitable gaming.

According to the CGC, 479 organizations that do not fall into the two exempt categories are “non-exempt” and are thus subject to the regulations and reporting requirements of the CGC and the charitable gaming statutes. As mentioned previously, in order to continue to hold a permit from the CGC, non-exempt organizations must commit a certain percentage of their charitable gaming proceeds to charity, as defined in §18.2-340.23 of the *Code of Virginia*, or risk having their permits suspended or revoked.

Organizations grossing over \$500,000 per year (tier 5) are required to commit 12 percent of gross revenues to charitable purposes. Organizations grossing between \$150,000 and \$500,000 have a ten percent charitable obligation. Organizations grossing less than \$150,000 must donate five percent of their gross revenue to charity. These required percentages have been in effect since October 1, 1998. Prior to that, organizations were subject to the use of proceeds contained in the Commission’s interim regulations. As mentioned earlier, organizations that were gaming in rented facilities prior to January 1, 2000 are waived from meeting this requirement through June 30, 2003. The majority of non-exempt organizations must follow the same permit and reporting

requirements. (One fraternal organization is subject to less stringent permit renewal requirements than other non-exempt organizations. This will be discussed in Chapter II.)

In addition, non-exempt organizations must agree to abide by fairly complex regulations regarding the conduct of charitable games (Exhibit 4).

These regulations prescribe the conditions under which games can be played,

<p style="text-align: center;">Exhibit 4</p> <p style="text-align: center;">Current Law Regarding the Conduct of Charitable Games</p>
<ul style="list-style-type: none">• Pull-tabs or seal cards may be sold only upon the premises owned/exclusively leased by the organization and only when the portion of the premises in which they are sold is open solely to members and their guests.• Proceeds from pull-tabs or seal cards sold in private social quarters are not to be included in determining the gross receipts of organizations.• Bingo games are to be held by a single organization no more than two days a week (except in cases of carnivals and fairs, for which special permits are obtained).• No premises may be used in whole or in part for the purpose of conducting bingo games more frequently than twice a week, unless the premises are owned by a nonprofit organization or a local government, in which case the facilities can be used no more than four days a week. For example, if a charitable gaming organization owns a building in which it conducts bingo games twice a week, the organization may rent it to another organization for charitable gaming two other days of the week.• Instant bingo is to be played only in conjunction with a regular bingo game.• Persons participating in the management or operation of charitable games must have been bona fide members of the organization for at least 30 days.• Organizations cannot compensate anyone for organizing, managing, or conducting games (with some exceptions).• Local governments may prohibit the playing of instant bingo and establish hours for the playing of bingo games. Local governments are prohibited from taxing charitable gaming proceeds.
<p>Source: The <i>Code of Virginia</i> §18.2-340.15-37.</p>

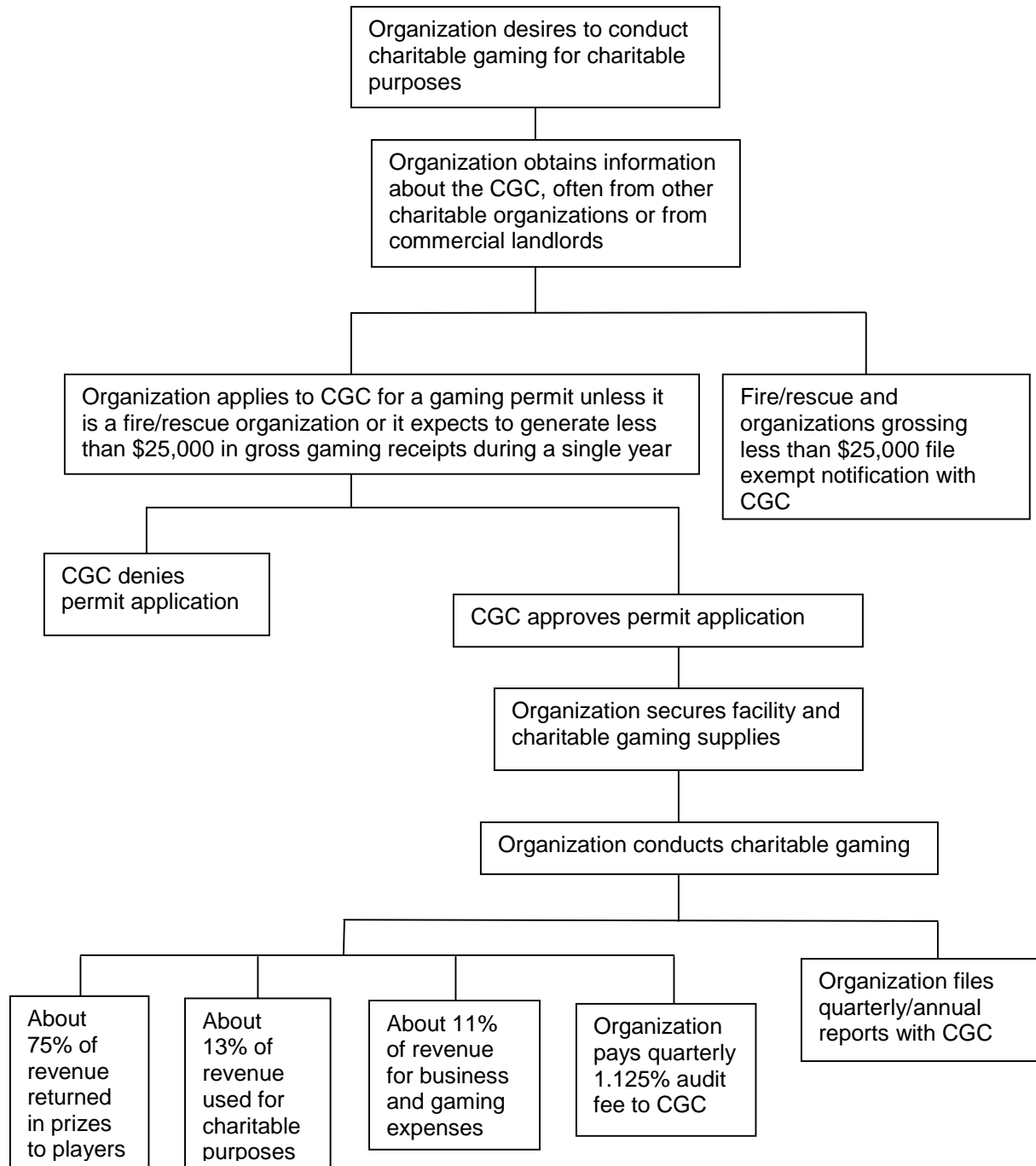
who is authorized to conduct the games, and the frequency of the games. For example, gaming must be conducted only at the location designated in an organization's permit and cannot be conducted more than two days in a given week (*Code of Virginia* §18.2-340.24 and §18.2-340.33, respectively). Permitted organizations also agree to produce and keep a variety of records that attest to their compliance with applicable laws and regulations.

Exempt volunteer fire and rescue organizations have fewer requirements to adhere to and organizations classified as “exempt” based upon their annual gross charitable gaming revenue are not required to obtain a permit or adhere to any of the CGC’s reporting requirements. All organizations, whether exempt or non-exempt, are subject to audit by the CGC. Figure 4 summarizes how qualified organizations become involved in the charitable gaming industry.

Organization and Funding of the Charitable Gaming Commission

The 1995 General Assembly created the Charitable Gaming Commission under the Office of the Secretary of Administration and charged it with maximizing the amount of gaming proceeds donated to charity and with ensuring that organizations uniformly complied with the charitable gaming laws. The Charitable Gaming Commission is a supervisory board that is vested with broad authority to regulate the charitable gaming community under the charitable gaming statutes.

The *Code of Virginia* states that the Commission shall consist of seven members appointed by the Governor and that, in order to qualify for appointment, members must have been residents of the Commonwealth for at least three

Figure 4**Entry and Participation in the Charitable Gaming Industry**

Source: JLARC staff analysis of information provided by the Charitable Gaming Commission.

years. Additionally, the statute encourages that individuals from different geographic regions of the State be appointed to the Commission. The Commissioners all serve on a part-time basis and are required to meet six times annually. The Commission is responsible for appointing an Executive Secretary and for approving the agency's budget requests and regulations. While the gaming legislation vests supervision of the charitable gaming community with the Commission, it is evident that the agency staff are primarily responsible for carrying out the regulatory responsibilities of the Commission.

The Charitable Gaming Commission is currently appropriated 26 full-time positions. The CGC currently has 16 full-time and 11 part-time positions filled. These employees either work in the Richmond central office or work from their homes in the four regions of the State. Field staff are primarily part-time personnel responsible for the inspection, audit, and enforcement functions of the CGC. The CGC is a nongeneral fund agency that is supported entirely by fees submitted by charitable gaming organizations. These fees generated revenues of \$3.2 million in FY 2002. The funding structure of the CGC is discussed further in Chapter IV.

The most recent issue faced by the CGC is the State's FY 2003 and FY 2004 budget crisis. The CGC experienced a reduction of seven and eight percent respectively of its appropriations for FY 2003 and FY 2004. (According to DPB staff, \$186,963 of the agency's FY 2003 budget was transferred to the general fund. The State will transfer \$216,730 to the general fund in FY 2004.) The agency also experienced another 15 percent budget reduction for FY 2003

and a 14.4 percent budget reduction for FY 2004. (This revenue is scheduled to be transferred to the general fund as part of the revisions to the 2002-2004 Appropriations Act.) This forced the CGC to eliminate four classified positions, two of which were vacant. Although the CGC has a balance of nearly \$3 million, spending restrictions imposed as a result of the revenue shortfall have limited its ability to use these funds. This has affected its efforts to provide training to organizations and has meant that four newly granted auditor positions cannot be filled. Because the fund balance cannot be used, the Charitable Gaming Commission has debated rebating some of the fund balance and/or placing a moratorium on fees charged to the charitable gaming community. The Commission voted in November 2002 to defer any such rebate or moratorium until after the 2003 Session of the General Assembly. (This issue is addressed in more detail in Chapter IV.)

The Charitable Gaming Commission is not supported with the State's general funds. Rather, it is financed through the collection of various fees submitted from the regulated community. These fees, all of which are statutorily defined, primarily consist of a charitable gaming permit application fee of \$200, an audit and administration fee of 1.125 percent of the regulated community's gross gaming revenue, and a fee to obtain a temporary tax-exempt status while waiting for a determination from the IRS. For the fiscal year ending June 30, 2002, the Auditor of Public Accounts reports that the CGC received \$3,238,616 in the fees from the regulated community.

JLARC REVIEW

The JLARC staff review of the Charitable Gaming Commission stems from a request from the Governor's Chief of Staff to complete a management review of the CGC. The study resolution adopted by JLARC in May 2002 directed its staff to address the following issues in its study:

- (1) Is the organization and management structure for the agency adequate to achieve its statutory objectives?
- (2) Does the Charitable Gaming Commission have the authority and the structure necessary to adequately oversee agency management and operations?
- (3) Does the agency have sufficient resources to implement its statutory mission?
- (4) Does the agency have adequate staffing to implement its statutory mission?

JLARC staff were directed to report study findings prior to the 2003 Session of the General Assembly. Work on this study began in May 2002, with primary research activities being conducted between the months of July and November 2002.

To address the study issues, JLARC staff conducted structured interviews with current and former Charitable Gaming Commission members, current and former CGC executive secretaries, current agency employees, and personnel from the offices of the Auditor of Public Accounts, the Department of Planning and Budget, the Secretary of Administration, and the Office of the Attorney General.

Additionally, JLARC staff reviewed various documents and publications generated by the CGC. These included annual reports to the Governor and the

General Assembly, minutes of Commission meetings, charitable gaming administrative regulations, policy statements released by the CGC, training material, personnel handbooks, employee work profiles, and lease agreements between charitable gaming organizations and property owners. Access to the CGC's electronic files allowed JLARC staff to review the financial reports of charitable gaming organizations, data on audits of those organizations, and information regarding the permits of organizations.

JLARC staff also conducted a file review of all cases investigated by the Charitable Gaming Commission for possible criminal activity, and obtained data maintained by the CGC on charitable gaming permits and audits and inspections of charitable organizations conducted by the CGC. Further, to understand how effectively the agency communicates the requirements of the program to the regulated community, JLARC staff conducted a mail survey of 637 permitted charitable gaming organizations across the Commonwealth, receiving 353 responses, which represents a response rate of 55 percent. JLARC staff also visited several organizations to observe their charitable gaming activities.

REPORT ORGANIZATION

The remaining chapters of this report discuss the JLARC staff review of the Charitable Gaming Commission. Chapters II and III are organized around the regulatory processes by which the Charitable Gaming Commission interfaces with the charitable gaming community. Chapter II presents JLARC staff findings with respect to the CGC's procedures for granting charitable gaming licenses to

interested organizations and also discusses the CGC's relationship with the regulated community. JLARC staff findings regarding the agency's oversight of charitable gaming through audit, inspection, and enforcement activities are presented in Chapter III. Finally, findings regarding the governance of the Charitable Gaming Commission are discussed in Chapter IV.

II. Licensing and Assisting the Charitable Gaming Community

Administratively, the Charitable Gaming Commission (CGC) is organized into three divisions individually responsible for the tasks of administration and licensing, charitable gaming audits, and enforcement of gaming statutes and regulations. (Refer to agency organization chart in Appendix C.) This chapter focuses primarily on activities of the CGC's administration and licensing division, which is responsible for granting charitable gaming permits to interested organizations. The regulated community reports overall satisfaction with the CGC's efforts to provide oversight of their charitable gaming activities. However, other evidence indicates that the CGC's ability to provide effective supervision is hindered by its inadequate attention to providing systematic training opportunities and support to charitable gaming organizations.

While the CGC's licensing process is adequate, it could be improved. Moreover, the lack of training for licensed organizations has resulted in an insufficient understanding of the charitable gaming statutes and the CGC's regulations and reporting requirements. This, in turn, has reportedly led to an increase in the workload of CGC staff, as problems that arise from this lack of training trigger the need for other oversight activities, such as audits and inspections. Training is paramount to charitable organizations' compliance with the statutes and regulations, given organizations' dependence on volunteers in charitable gaming operations and the high turnover of these volunteers.

The CGC's records management and record-keeping policies with respect to licensing have been problematic. Accuracy of records regarding the most current status of permit applications is questionable. In addition, data on actions taken on permit applications that returned problematic criminal histories are also incomplete. This review also found that the CGC is not in compliance with the Virginia Public Records Act, as the agency does not have a records management policy. Exhibit 5 provides a summary of JLARC's findings with respect to the CGC's ability to carry out its functions of licensing and training.

LICENSING CHARITABLE ORGANIZATIONS

The Charitable Gaming Commission's initial activity in regulating the charitable gaming community is ensuring that all relevant charitable organizations obtain a permit to conduct charitable gaming activities. The CGC has one part-time and nine full-time positions allocated to the Administration and Licensing section. These staff perform the mandatory permitting of organizations wishing to conduct charitable gaming.

The Licensing Process Monitors the Entry of Organizations Into the Charitable Gaming Community

The charitable gaming statutes, in addition to establishing the Charitable Gaming Commission, provide requirements for numerous aspects of charitable gaming in the Commonwealth. This section summarizes current law as it relates to the granting of charitable gaming permits.

Exhibit 5 Charitable Gaming Commission Administrative Performance		
Function	Findings	Summary
Licensing	<ul style="list-style-type: none"> • Renewal application requests more information than CGC regulations suggest and is unnecessarily lengthy. • The CGC requires annual permit renewal when the statute permits biennial renewals. 	√-
Public Information and Training	<ul style="list-style-type: none"> • Regional training sessions have been conducted for charitable gaming organizations in only 2000 and 2001. • There is no consistent and systematic approach to offering individual training to organizations. • Training for new organizations was only begun in 2002. 	X
Licensing Records	<ul style="list-style-type: none"> • The CGC does not have a records management policy as required by §42.1-76 of the <i>Code of Virginia</i>. • Data on permit decisions made by the CGC are unavailable for 688 problematic background checks. • The CGC does not accurately maintain the date that a completed application is received from an organization in its database. • The CGC does not maintain accurate data on the current status of a permit application. The status of 296 permits from 2000 to 2002 is currently unknown. 	X
Key: √ = Adequate √- = Needs improvement X = Inadequate		

To facilitate the regulation of local organizations by the CGC, §18.2-340.25 of the *Code of Virginia* mandates that “prior to the commencement of any charitable game, an organization shall obtain a permit from the Commission.”

Permits are granted on an annual basis and require the submission of a \$200 permit fee. Exhibit 6 summarizes key statutory provisions regarding the licensing of charitable organizations.

Exhibit 6**Current Law Regarding the
Licensing of Organizations to Conduct Gaming**

- Permitted organizations are required to use a predetermined percentage of gross gaming receipts for charity.
- An organization must have at least 50 percent of its membership consisting of Virginia residents in order to obtain a permit.
- To qualify for a permit, an organization must have been in existence or met on a regular basis for a period of at least three years (with certain exceptions).
- Organizations must be non-profit.
- Complete applications must be acted upon by the CGC within 45 days.
- Permits are granted only after a reasonable investigation has been conducted by the CGC.
- Applications are to be made on CGC-prescribed forms, accompanied by a processing fee.
- The CGC may deny, suspend, or revoke the permit of any organization not found to be in compliance with *Code of Virginia* and CGC regulations.

Source: Section 18.2-340.15-37 of the *Code of Virginia*.

The *Code of Virginia* §18.2-340.25(B) states that permits to conduct charitable gaming “shall only be granted after a reasonable investigation has been conducted by the Commission.” Additionally, §18.2-340.33.12 of the *Code* requires that:

No person shall participate in the management, operation or conduct of any charitable game if, within the preceding five years, he has been convicted of a felony or crime of moral turpitude.

To this end, the CGC requires that a completed permit application include documentation on the organization’s history, its membership, its financial

activities and tax-exempt status, contracts between gaming suppliers and landlords, and the anticipated uses of charitable gaming revenue.

A fee of \$200 accompanies all non-exempt permit applications, which is partially used to fund the criminal history checks conducted by the CGC on permit applicants. While the CGC has traditionally researched the criminal history of the officers of the organization and all game managers, it has recently changed that policy so that criminal history checks are conducted on the president of the organization only. This was done primarily to reduce the expense of processing the permit applications for the CGC. Completed applications will still have to provide the CGC with authorization to conduct criminal history checks on all officers of the organization and game managers, despite the fact that these criminal history checks will not automatically be conducted as they have in the past. The CGC's current policy of conducting criminal history checks on the president of organizations only is based upon the notion that the president is ultimately responsible for the integrity of the organization. However, because the game manager is more likely to have more direct and frequent contact with the financial transactions involved in charitable gaming activities, the CGC should also research the criminal history of game managers. In addition, the CGC should seek a ruling of the Attorney General to determine if either approach meets its statutory mandate.

While data available at the agency indicate whether or not a problematic criminal history was returned, data were not available on the actual details of these results. Since 1996, 15,920 criminal history checks have been conducted

for the CGC. Of these, 1,078 (seven percent) have returned problematic results. Charitable Gaming Commission data indicate that only 18 of those resulted in the denial of the respective permit application. In addition, data on permit decisions made by the CGC are unavailable for 688 problematic background checks. It is unclear what became of these records.

CGC staff have stated that their primary concern regarding an applicant's criminal history is with any crimes of a financial nature, such as bad checks, theft, or embezzlement. The CGC exercises this discretion even though the *Code of Virginia* says that no person shall participate in gaming if they have been found to be convicted of *any* felony or misdemeanor. CGC staff have also stated that this policy results in the infrequency of application denials as compared to the number of problematic criminal backgrounds discovered because the focus of criminal history checks is limited to financial crimes. It is also noteworthy that the CGC's regulations on criminal histories are more stringent than the statutory provisions on this subject, in that an applicant's criminal history is researched as far back as ten years rather than the five years required by the statute.

Organizations exempted under the *Code of Virginia* §18.2-340.23 from the standard permit application and financial reporting requirements are not subject to background checks.

***Recommendation (1).* The Charitable Gaming Commission should conduct criminal history checks of game managers as well as organization presidents. In addition, the Charitable Gaming Commission should seek a ruling of the Attorney General to determine if its policies regarding criminal history checks conform to the requirements of the Code of Virginia.**

The *Code of Virginia* §18.2-340.25 (B) requires that “all complete applications for a permit shall be acted upon by the CGC within forty-five days from the filing thereof.” While the CGC maintains data on the date the initial application was received, it does not keep a record of the date a *completed* application was received. These two dates may be different in some cases as CGC staff assert that many applications arrive with incomplete components. Without accurate data on the date completed applications are received, it is not possible to determine the extent of the CGC’s compliance with this statutory requirement.

While CGC staff have stated that data on the number of permit applications received annually are not accurate from 1996 to 1999, data on the number of applications received by the CGC since 2000 are presented in Table 2. This table also includes the number of those applications that were approved and issued, denied, or voluntarily withdrawn from consideration by the applicant. There are 320 permit applications that did not have an accurate date of receipt associated with them in the CGC’s database and those applications are not included in Table 2.

In addition, the CGC does not always maintain accurate data on the current status of the permit applications it receives, so for each year there are a number of applications for which no accurate data are available. These 296 applications are labeled as “unknown” in Table 2. Table 2 includes both exempt and non-exempt applicants. Currently, there are 611 exempt and non-exempt organizations approved by the CGC to conduct charitable gaming.

Recommendation (2). The Charitable Gaming Commission should develop a consistently implemented policy to maintain current and accurate records on its licensing process. Based on the statutory requirement that the Charitable Gaming Commission act upon a completed application within 45 days, the Charitable Gaming Commission should ensure that complete and accurate data are maintained on the date a completed application is received. In addition, the Charitable Gaming Commission should ensure that accurate data on the most recent status of a permit application are maintained.

Table 2					
Permit Application Outcomes					
Year	Received	Issued	Denied	Withdrawn	Unknown
2000	784	614	3	7	160
2001	712	653	1	3	56
2002	484	400	0	4	80
Total	1,980	1,667	4	14	296
Note: Permits issued in the latter part of 2001 may have still been active at the time of this analysis. 320 applications were excluded from this analysis because of missing dates. Source: JLARC analysis of Charitable Gaming Commission permit data, September 2002.					

The CGC Lacks a Records Management Program

As deficiencies in the records management practices of the CGC became apparent, JLARC staff reviewed the agency's records protocols for compliance with the Virginia Public Records Act. To ensure that all State agencies adopt a uniform process for maintaining and preserving public records, the General Assembly enacted the Virginia Public Records Act, Chapter 7 of the *Code of Virginia*. Section 42.1-85 of the *Code* requires all State agencies to designate "records officers" to serve as liaisons between their respective agencies and the Library of Virginia, which is responsible for overseeing this program. The records officers are responsible for developing and managing their

respective agency records management programs. The Library of Virginia is responsible for assisting State agencies to develop records management programs that comply with the Virginia Public Records Act. This review found that the CGC only recently made an attempt to develop a records management program by designating a staff member to serve as the agency's records officer in September 2002.

CGC staff stated that the agency does not maintain any written documentation governing the storage or destruction of its paper or electronic records. These staff also stated that the agency has maintained all of its records since 1995 and has never destroyed or archived records at the State library. However, as noted elsewhere in this report, requested records were not always available and in some cases the records location or existence was not known. These practices are not in accordance with the Virginia Public Records Act. In addition, as noted elsewhere in this report, the CGC's inability to locate records is an inconvenience to the regulated community.

***Recommendation (3).* The Charitable Gaming Commission should develop a records management policy that establishes standards regarding the control, retention, preservation, and proper disposition of all paper and electronic records of the agency. The Charitable Gaming Commission should develop this policy in cooperation with the records management and imaging services division of the Library of Virginia to ensure that it complies with the Virginia Public Records Act.**

Most Permit Applications Received by the CGC Are Requests for Renewals, Which Could Be Simplified and Required Less Frequently

The *Code of Virginia* §18.2-340.25(B) states that "no permit shall be valid for longer than two years." The CGC requires charitable gaming permits to be renewed on an annual basis, however. The renewal process could be

simplified were the CGC to shift from a schedule of annual renewals to biennial renewals. Changing to a biennial schedule would reduce paperwork for the regulated community and CGC staff, allowing the agency to focus more on training and other regulatory functions.

The renewal application requests information identical to that submitted by the organization in the original application, with the exception of some organizational background information, the organization's anticipated gross gaming revenue, and the intended use of this revenue. Data maintained by the CGC from 2000 to 2002 indicate that 98 percent of the applications received during that period were renewal applications. JLARC staff reviewed the CGC's renewal application as well as the renewal application requirements delineated in the agency's regulations. While the regulations state that "organizations applying to renew a permit previously issued by the CGC shall submit Articles of Incorporation, By-Laws, Charter, Constitution, or other organizing documents and IRS determination letter *if there are any amendments or changes to these documents*" (emphasis added), the renewal application itself requests all of these documents even if there have been no amendments or changes. Therefore, charitable organizations are submitting paperwork to the CGC that is not actually required by the statute or regulations. The CGC could reduce paperwork requirements on charitable organizations by clarifying the information that is required to be included in the renewal application.

Organizations affiliated with the Fraternal Order of Elks have been approved to complete a greatly abbreviated version of the renewal application in

the past year. The renewal form approved for the Elks is one page, compared to six pages for a standard renewal application. In addition, criminal history research is only conducted on the president of the lodge. CGC staff have stated that this was done at the request of the Virginia Fraternal Order of Elks because the good standing of individual lodges can be vouched for by the National Lodge. CGC staff have also stated that if other organizations “affiliated with a fraternal order or post made up of the armed services” are interested in completing a similar application, their representatives should contact the CGC. Reportedly, several organizations have contacted the CGC with such a request, but no action has been taken on their requests. The fact that the CGC has been able to simplify permit renewals for one organization suggests that movement in the direction of renewal simplification is feasible.

Staffing for the Licensing Division Is Adequate. The JLARC staff review found that the CGC’s allocation of staff to the tasks of licensing organizations to conduct charitable gaming activities is adequate. However, the license renewal process followed by the Charitable Gaming Commission is cumbersome and time-consuming, both to the charitable organizations and CGC staff. Simplification of the renewal process would seem to serve the interests of both the CGC and charitable organizations. Reducing the requirements of the charitable gaming renewal permit application would somewhat alleviate the workload of these staff, allowing them to focus more of their efforts on training organizations in how to properly complete their permit applications and properly

comply with other aspects of the charitable gaming statutes and CGC regulations.

Recommendation (4). The Charitable Gaming Commission should simplify its renewal process, principally by shortening its renewal application. Permit applications should clarify that additional copies of an organization's IRS determination letter and their organizing documents are not required unless amendments have been made to these documents. In addition, the Charitable Gaming Commission should require biennial instead of annual permit renewals.

Organizations Indicate Overall Satisfaction with the Licensing

Process. The JLARC staff mail survey of the 637 organizations permitted to conduct charitable gaming as of September 2002 asked respondents about the process of becoming licensed to conduct charitable gaming. The survey effort resulted in a response rate of approximately 55 percent, with 353 organizations returning a completed questionnaire. A copy of the survey instrument is included in Appendix D. Responses were positive overall to questions regarding the fairness and uniformity of permit requirements and the timeliness of decisions made by the CGC regarding permit applications. Responses to these statements are shown in Table 3.

For those respondents who reported disagreement with the statement "requirements to obtain a permit are fairly and uniformly applied," reasons included that exempting certain types of organizations from these requirements was unfair and that the renewal application required an excessive amount of information.

<p>Table 3</p> <p>Survey Responses Regarding Charitable Gaming Regulations</p>						
Statement	Agree	Somewhat Agree	Somewhat Disagree	Disagree	Don't Know	Total
Requirements to obtain a permit are fairly and uniformly applied (n=346)	58%	14%	2%	4%	22%	100%
Decisions regarding new or renewal permit applications of organizations are made in a timely manner (n=351)	72%	14%	3%	5%	6%	100%
Note: Missing responses not included in this analysis.						
Source: JLARC analysis of mail survey to charitable organizations.						

The following case study is based on a response from an individual familiar with different charitable gaming organizations. The respondent claims that these organizations received inconsistent treatment from the CGC regarding the different renewal applications.

An accountant familiar with the operations of five different charitable gaming organizations claimed that within the last year, when these organizations filed for renewal applications in the same manner as they had in previous years, the CGC asked for additional information that had never been previously requested. "There was no explanation as to why this was being done or the legal basis for it in the charitable gaming statute or the CGC's regulations. These items had never been requested in prior years, and the requests were inconsistent from one organization to the other. Then, it seemed as though, depending on how each organization responded, objected, and to whom they complained, their applications were finally approved. Some had answered the questions, others not, others partially. There was no consistent treatment."

The CGC staff, however, claim that their treatment of these particular organizations' permit applications was consistent. The respondent also cited problems with the CGC staff being able to access records already provided to it by the charitable organizations.

The CGC reportedly asked these organizations to provide information for their permit applications that had already been submitted. "After searching, the response is usually that they found the requested information in another area, being reviewed." Reportedly, the Commission also stated to these organizations that interpretations of the statutes could vary among employees.

In the conduct of this review, JLARC staff also encountered situations similar to those noted above. In some cases, inconsistent information was provided and, in others, records were either not available or not maintained.

RELATIONSHIP WITH THE REGULATED COMMUNITY

One indicator of the Charitable Gaming Commission's effectiveness as a regulatory agency is the nature of its interactions with the charitable gaming community. While the CGC's efforts to interact with gaming organizations have met with some success, it is evident that in order to fulfill its mission of securing uniform compliance with the *Code of Virginia*, greater resources must be focused on assuring the CGC's accessibility to the regulated community. Although charitable gaming organizations report overall satisfaction with the CGC, improvement is needed in the frequency and consistency of training provided to these organizations and in the CGC's efforts to address routine problems that arise within these organizations.

It is also apparent that the disparagement by agency staff members of the charitable gaming industry and particular gaming organizations is potentially damaging to the working relationship between the CGC and regulated community. Regularly characterizing certain cohorts of the gaming community with overwrought terms such as “the bingo mafia” and referring to secondary property owners as “unscrupulous landlords” both undermines the professionalism of the agency and has the potential to damage its credibility with the gaming community. One survey respondent reported that:

Organizations cannot report illegal activities anymore since someone in the CGC has a big mouth and tells all that is going on to anyone and adds to the story. If an organization reports too much, it will probably be audited to shut [them] up.

While most organizations describe their interactions with CGC staff as positive, some organizations, having been exposed to such language or behavior, take great exception to it. CGC staff should consistently interact with the regulated community in a professional and balanced manner.

Training of Charitable Gaming Organizations Is Problematic

One of the primary reasons for the creation of the Charitable Gaming Commission was the findings of two joint subcommittee studies of the charitable gaming statutes in 1994 and 1995. These studies were initiated, in part, out of concern that local administration of the charitable gaming statutes was not uniform across the State. Additionally, grand jury felony indictments in Henrico County drew attention to the possibility that lack of uniformity in the enforcement of the laws lead to their abuse.

The agency's primary focus on enforcement of the charitable gaming statutes reflects its creation in an environment of concern about the lack of uniform enforcement of charitable gaming law. This focus on ensuring compliance with the law through oversight and enforcement, while justified, addresses problems that might be prevented were quality training provided to organizations on how to properly conduct charitable gaming activities. CGC staff have stated that many of the problems that must be addressed within the regulated community are the result of a lack of understanding by organizations as to the CGC's regulatory requirements or the charitable gaming legislation.

One CGC staff member reported that those staff who only come into contact with organizations that deliberately violate the Code and regulations tend to view all organizations as being dishonest. However, this CGC staff member stated that most of the problems that arise are not deliberate and are due to insufficient understanding of the statutes and regulations. This individual also stated that members of the charitable gaming community often confess that they "just didn't know" that they were being noncompliant.

Repeated training of charitable organizations is necessary because turnover in game management and game volunteers is frequent. Increased training opportunities for organizations would allow the CGC to more effectively focus its regulatory efforts on problems arising out of deliberate violations of the *Code of Virginia* and regulations. CGC staff have indicated, however, that there are not adequate resources to provide the necessary level of training on proper game management required by all organizations.

Beginning in 2000, the CGC began to include the training of organizations in its regulatory scheme and provided training sessions for charitable gaming organizations in various regions of the Commonwealth. In

2000, these training sessions were held in eight locations around the State. Records from these sessions indicate that their focus was to train attendees on effective game management, record keeping, the use of gaming funds, and financial reporting. The average number of attendees at each of these eight sessions was 69 with a total of 555 for all sessions. Feedback provided on the CGC's evaluation forms of the session indicated that, on average, attendees were satisfied with the information provided in the training. In 2001, only two training sessions were held. These focused on the process of CGC inspections of organizations, proper reporting of charitable gaming financial activity, effective game management, federal tax issues affecting tax exempt organizations, and a discussion of commonly raised issues relating to the charitable gaming statutes and regulations. A total of 252 individuals attended these sessions. Participant evaluations were not available, however. No general training sessions have been conducted in 2002.

In February 2002, the CGC adopted a policy of trying to individually train all organizations newly permitted to conduct bingo games in the proper conduct of charitable gaming and compliance with the statutory and regulatory requirements. CGC staff state that the agency has provided this training to 27 new organizations. According to CGC staff, out of those organizations, one elected to suspend its gaming endeavors when it realized that not enough volunteers were available to successfully run the games.

JLARC's mail survey asked respondents about the utility of the CGC's regional training. Sixty percent of those organizations responding to the survey

indicated that they had attended these trainings, 30 percent had not attended a training, and ten percent had not heard of these training opportunities. Ninety-seven percent of respondents indicated that they found this training to be “useful” or “somewhat useful,” while three percent found it to be “not at all useful.” The redirection of some CGC resources to training would promote some of the original objectives for its creation and perhaps mitigate some of the need for later corrective measures.

Recommendation (5). The Charitable Gaming Commission should allocate sufficient resources for the purpose of providing regular training opportunities to charitable gaming organizations in each region of the State.

Survey Responses Indicate Overall Satisfaction With the CGC

Overall, survey responses indicate a favorable relationship between the Charitable Gaming Commission and the regulated community, with 97 percent of all respondents indicating that their overall working relationship with the Charitable Gaming Commission was either “satisfactory” (86 percent) or “somewhat satisfactory” (11 percent).

The majority of respondents indicated that they have been permitted by the CGC to hold charitable gaming activities for more than three years (86 percent). The remainder reported having been permitted by the CGC for either one to three years or less than one year. Most survey respondents indicated that they were permitted to conduct bingo and pull-tab games, with gross receipts for the majority of respondents reportedly ranging from \$25,000 to over \$500,000. Thirty-two percent of respondents reported generating gross receipts between

\$25,000 and \$150,000, 30 percent reported between \$150,000 and \$500,000, and, 32 percent reported receipts over \$500,000.

Survey responses were positive overall to questions about the sufficiency of the CGC's communications regarding its regulatory requirements, the fairness and appropriateness of its regulations and enforcement of those regulations, and the CGC's success at maintaining a level playing field for charitable organizations. A summary of these responses is provided in Table 4.

While the majority of respondents reported that the enforcement of CGC regulations is carried out appropriately, some organizations that disagreed with this statement indicated that CGC staff make all organizations "feel like criminals" or that the CGC does not consistently sanction organizations for wrongdoing. Finally, though most organizations responding to the survey reported that CGC regulations help maintain a level playing field for all charitable organizations, 25 organizations reported feeling that exempting certain types of organizations from CGC requirements is unfair. Others noted that being allowed to count mortgage payments and not rent as charitable giving puts renters at a disadvantage, and that applying one set of rules to such a variety of organizations (e.g. large vs. small organizations) was unfair.

The survey also asked respondents whether their organizations are better able to raise funds for charitable purposes as a result of the CGC's oversight. Twenty-six surveys were returned without a response to this question and 21 surveys were pre-test surveys that did not include this question. Of those organizations that did respond, the majority (66 percent) indicated that they

Table 4 Survey Responses Regarding Charitable Gaming Regulations						
Statement	Agree	Somewhat Agree	Somewhat Disagree	Disagree	Don't Know	Total
The CGC provides enough information to my organization to allow us to sufficiently meet its regulatory requirements. (n=350)	67%	22%	6%	4%	1%	100%
CGC regulations are applied to charitable gaming organizations fairly and uniformly. (n=328)	57%	13%	5%	8%	18%	100%
Enforcement of CGC regulations is carried out in an appropriate manner. (n=349)	63%	16%	2%	4%	16%	100%
CGC regulations help maintain a level playing field for all charitable organizations. (n=327)	63%	15%	4%	9%	9%	100%
Note: Missing responses are not included in this analysis. Some totals will exceed 100 percent due to rounding. Source: JLARC analysis of mail survey to charitable gaming organizations						

felt that this was true, while 34 percent felt that this was untrue. Comments from those individuals who disagreed with this statement included observations that CGC regulations resulted in less money being donated to charity (28 respondents) and that the CGC's oversight did not impact their organization's charitable giving because they had always contributed a fair amount to charity from their gaming proceeds (32 respondents). Other comments included

suggestions that the CGC has too many rules and regulations and that the charitable giving requirements are not fair for smaller organizations.

Finally, the mail survey asked respondents about the assistance they received from the CGC. Forty-nine percent of respondents indicated that they requested assistance from the CGC on charitable gaming matters no more than once or twice a year. Twenty-three percent reported asking for assistance less frequently than once a year, while 14 percent asked for assistance every few months, and 11 percent never requested assistance. Finally, three percent of respondents reported asking for CGC assistance every month. Table 5 illustrates the number of respondents that reported requesting certain types of assistance.

The majority of survey respondents indicated that they most often solicit the CGC's assistance in interpreting its regulations, completing permit applications, proper record keeping, and submitting financial reports. Organizations report concerns about possible illegal activity occurring within their gaming activities and seeking assistance on landlord issues least often. Other types of assistance organizations report needing include obtaining an application for a special permit and questions about future training opportunities.

When asked whether the CGC provided organizations with timely assistance, 86 percent of those responding to this question indicated that the CGC's assistance was timely. Five percent, or 16 organizations, reported dissatisfaction with the timeliness of the CGC's response to their requests for assistance. When asked about the adequacy of the assistance provided by the

Table 5 Types of Assistance Requested by Organizations		
Assistance Type	Number of Respondents	Percent of Respondents
Interpretation of gaming regulations	193	55%
Completing permit application	135	38%
Proper record keeping	117	33%
Submission of reports	112	32%
Application status	90	25%
Permit changes	58	16%
Financial management	44	12%
Concerns about possible illegal activity	21	6%
Other	17	5%
Landlord issues	8	2%
Note: Totals will exceed 100 percent because respondents were instructed to check all relevant types of assistance sought. Source: JLARC analysis of mail survey to charitable gaming organizations.		

CGC, 88 percent of respondents reported satisfaction and four percent, or thirteen organizations, indicated that the assistance was not adequate.

When asked whether organizations had any concerns related to charitable gaming that had not been adequately addressed by the CGC, 89 percent of those organizations responding to this question indicated that they had no concerns. However, 11 percent, or 35 organizations, responded that there

Table 6 Satisfaction with Overall Assistance Provided by the CGC			
Statement	Yes	No	Don't Know or Not Applicable
Did the CGC provide timely assistance to your organization? (n=343)	86%	5%	9%
Did the CGC provide adequate assistance to your organization? (n=343)	87%	4%	9%
Are there questions/concerns that have not been adequately addressed by the CGC? (n=343)	11%	89%	0
Note: Missing responses not included in this analysis. Source: JLARC analysis of mail survey to charitable gaming organizations.			

were outstanding questions from their organization not adequately addressed by the CGC. Table 6 provides a summary of these responses.

In summary, while charitable gaming organizations report overall satisfaction with the CGC's oversight, other evidence suggests that efforts to educate organizations on the proper conduct of these activities should be improved. Reducing the requirements of the charitable gaming licensing process would make more resources available for providing such training opportunities. The Charitable Gaming Commission's ability to fulfill its statutory mission of ensuring uniform compliance with the charitable gaming statutes and regulations is largely dependent on its efforts to sufficiently educate the regulated community

in the proper conduct of charitable gaming activities. Untrained volunteers will inevitably make mistakes that will lead the CGC to allocate more resources to such regulatory activities as audits or investigations. The CGC's resources could be used more efficiently if it were able to focus more on deliberate rather than unintentional violations of the law. Chapter III discusses the CGC's audit and enforcement activities and JLARC staff findings with respect to the effectiveness of these efforts.

III. Oversight of the Charitable Gaming Community

Included in the Charitable Gaming Commission's (CGC) approach to regulating charitable gaming in the Commonwealth are oversight of the financial activities of organizations, ensuring that charitable gaming activities are conducted according to statute and CGC regulations, and investigating criminal activity. These regulatory activities are the responsibility of the audit and enforcement divisions of the CGC. Whereas the licensing function of the agency operates to ensure that only qualified organizations are permitted to conduct charitable gaming activities, the audit and enforcement divisions focus on how these organizations operate their games and administer their finances. The audit and enforcement divisions, therefore, are the primary means by which the CGC regulates compliance with the charitable gaming statutes.

While the CGC has improved its regulatory scheme with respect to these functions since its creation in 1996, this review found that the demands of regulating the charitable gaming industry are not sufficiently met with the CGC's current structure and level of staffing, and there is a need for further coordination of staff responsibilities in order to meet these demands. Two of the principal purposes of the Charitable Gaming Commission are to prevent fraud and abuse of the charitable gaming statutes and to maximize the amount of gaming revenue used for charity. The CGC's role in the successful prosecution of 25 out of 33 criminal cases suggests that its enforcement efforts may provide an effective deterrent to illegal activity.

Staffing of the enforcement division, however, appears to be inadequate to handle the current demands of enforcing the charitable gaming statutes. Given that the CGC currently has 14 open criminal investigation cases for two full-time agents and one part-time agent, it is evident that if the CGC is to continue to adequately investigate potential illegal activity within the regulated community, it will require additional field agents.

While the CGC has been successful in prosecuting criminal activity through its enforcement efforts, the agency's oversight of the financial activities of charitable gaming organizations has not been effective. CGC staff have audited only 26 of 632 organizations identified in calendar year 2002 as needing an audit. The CGC audited an additional 54 organizations in 2002 that were identified in previous years as needing an audit. In total, the CGC has audited 70 organizations in 2002. Additionally, out of 75 audits conducted from October 2001 to September 2002, 54 organizations were found to be underreporting revenues by an average of \$116,141, or a total of \$6.3 million. Such underreporting represents both an opportunity for fraud and the potential loss of substantial revenues for charitable purposes.

Although the CGC states that oversight of organizations' financial activities is essential for ensuring compliance with the statutes, it has not developed a consistently implemented policy to conduct audits of organizations, nor has it consistently reviewed the annual reports and fees submitted from organizations, as required by the *Code of Virginia*. Exhibit 7 provides a summary of study

findings with respect to the CGC's ability to carry out audit and enforcement functions.

Exhibit 7 Charitable Gaming Commission Performance: Audit, Enforcement, and Records		
Function	Findings	Summary
Audit	<ul style="list-style-type: none"> No audits were conducted in first two years of operation. Reviews of financial reports and fees sent in by organizations only began in 2000. The CGC's approach to the audit process has been inconsistent and inefficient. The amount of time taken to complete an audit has been excessive in some cases. Audit staff time is inefficiently used. The CGC has only been able to conduct a fraction of the audits needed. 	X
Enforcement	<ul style="list-style-type: none"> The CGC has achieved a conviction rate of 90 percent in criminal cases brought to trial. 	√
Audit and Enforcement Records	<ul style="list-style-type: none"> The CGC only began systematically recording its audit findings in 2000. Criminal investigation data are not automated. Criminal investigation files are not maintained in the Central Office, but in the homes of field agents. Field staff do not have ready access to updated CGC data. Not all central office staff are sufficiently able to access current electronic data on charitable gaming organizations due to the inefficient structure of the data and the lack of cross-training provided to these staff on accessing this data. Electronic data maintained on incident reports are incomplete prior to 2001 and data on the resolution of these reports are not maintained in one database. 	X
Key: √ = Adequate √- = Needs improvement X = Inadequate		

AUDIT EFFORTS, STAFFING ARE INSUFFICIENT

According to Charitable Gaming Commission staff, the agency's primary tool in ensuring compliance with the charitable gaming statutes and in maximizing charitable contributions is its audit function. Despite the importance placed on this responsibility and despite the *Code of Virginia* requirements with respect to financial oversight of the charitable gaming community, the CGC has not effectively executed this function. It has not consistently complied with the requirements of the *Code* and it has not utilized its resources to effectively or efficiently fulfill its financial oversight responsibilities. Out of 632 organizations that have been identified by the CGC as eligible for an audit in 2002, only 26 have been audited. The CGC audited an additional 54 organizations in 2002 that were identified in previous years as needing an audit. In total, the CGC has audited 70 organizations in 2002. Both the structure of the audit division and the underutilization of staff resources contribute to this ineffective approach to financial oversight of charitable gaming. If the CGC's audit efforts are improved, the agency could better fulfill its missions of ensuring the integrity of charitable gaming financial activities and maximizing the charitable gaming revenue actually committed to charitable purposes.

According to the statutes in place prior to the creation of the CGC, financial records from charitable gaming were to be submitted to the Commissioners of Accounts in each locality where charitable gaming occurred. When the Charitable Gaming Commission was created it assumed responsibility for this audit function. The purpose of the audit division is to oversee the uses of charitable gaming revenue and to ensure that the greatest possible amount of

resources is being committed to charitable purposes. The *Code of Virginia* §18.2-340.31 states that the financial reports submitted to the CGC by organizations permitted to conduct charitable gaming activities “shall be subject to audit by the Commission in accordance with Commission regulations.” Additionally, §18.2-340.18 provides that “the Commission, its agents and employees, may conduct such audits...as they deem necessary and desirable.”

Eighteen other states include an audit component in their regulatory approaches, with total audit staff ranging from one in Michigan to 25 in Texas. While the CGC has always had an audit responsibility, it did not begin conducting audits of the financial records of organizations until 1998, and only began reviewing the financial reports of organizations submitted to the CGC in 2000. While its oversight of charitable gaming financial activities is essential in enforcing the charitable gaming statutes, the agency has not allocated appropriate resources to the function, has failed to establish a consistently implemented approach to conducting audits, and has structured its audit division inefficiently.

The CGC’s Approach to Audits Has Been Inconsistent

The CGC has performed the audit function in three different ways since it began auditing organizations in 1998. Initially, organizations were targeted for CGC audits based upon the amount of revenue they were generating. Those organizations with higher grossing games were examined by audit staff for compliance with the charitable contributions requirements. CGC staff have estimated that approximately 75 percent of these audits found no wrongdoing.

The philosophy behind conducting audits in this manner was to establish a presence in the charitable gaming community and focus on organizations with the largest gross revenues.

In October 2000, the CGC adopted the philosophy of conducting thorough, comprehensive audits on organizations' financial activities if audit staff received information from CGC enforcement staff that there might be problems with those organizations' financial management. However, comprehensive audits required a substantial time commitment from limited staff. Consequently, beginning in October 2001, auditors began conducting limited audits that focused on the charitable contributions of organizations and whether organizations had reported all gaming receipts. This remains the current approach to conducting field audits.

While the charitable gaming statutes do not actually require that the CGC conduct field audits of organizations, they do mandate that organizations' financial reports "be subject to audit by the Commission in accordance with Commission regulations" (*Code of Virginia* §18.2-340.31). CGC staff have stated that systematic reviews of these financial reports, or "desk audits," only began in 2000, primarily due to a change in audit personnel. Prior to that, an organization's financial reports would be examined when it was determined through another source, such as information provided by CGC enforcement staff, that an organization would need to be audited. The financial reports would then be reviewed during the course of the audit. Therefore, from 1996 to 1999, the CGC was not conforming to its mandate to review the financial reports of

organizations. Nonetheless, charitable organizations were using their resources to complete and submit financial reports that were never reviewed.

CGC data indicate that from 1998 to 2000, 111 organizations did not submit the required annual reports or fees to the agency. No data on delinquent reports and fees were provided for 1996 and 1997. The agency has presently been able to collect the required reports and fees of 80 of these 111 organizations. The fees collected total \$129,650. Twenty-one of these organizations have discontinued their gaming activities and, because of this, CGC staff have written to JLARC staff that they have “no recourse to require compliance with [the] reporting statute.”

When concerns were raised about this, agency staff were reportedly unaware whose responsibility this should have been. At that time, the audit division took over the responsibility of reviewing organization reports and fees. CGC staff have also stated that prior to the new protocols established by the audit division for reviewing annual reports and collecting fees, checks sent in by organizations would not be cashed within a reasonable amount of time by the CGC, and that there were occasions when payments were lost. Now, staff indicate that payments received from organizations are entered into the agency's system immediately. CGC staff stated that while they have had knowledge of those organizations that have not submitted the required reports and/or fees for a year and a half, they have only begun asking for those delinquent fees and reports this year. The Executive Secretary of the CGC wrote to JLARC staff:

Prior to 2001, the agency did not have a database link between monies received and financial reporting systems.

Therefore, all monitoring of audit and administrative fees was a manual operation. While there was a process in place and an effort was made to collect these fees, we concur that we cannot ensure the accuracy and comprehensiveness of the system.

The primary method for selecting organizations for audits is now through agency “desk audits” of financial reports. When the CGC receives a problematic report, an attempt is made to reconcile the issue with the organization by having it submit a revised report. CGC staff stated that in 2001, 150 letters were sent to organizations asking for clarification in their financial reports. If a resolution cannot be reached in this way, the CGC will target the organization for an audit focused on the problem identified by their initial review of the financial reports. Problems typically involve the organization underreporting its gaming receipts.

The Current Audit Process Shows Improvement

Besides targeting organizations for audit through their financial reports, the CGC may also rely on information from other sources, such as agency inspectors. The audit manager reviews this information and compares it to the organization’s financial reports. Generally, issues are reconciled in this manner without requiring that an audit be conducted.

Assignments to auditors are based on the auditor’s experience, current workload, and the requirements of the audit. Once an audit is assigned, the audit coordinator then collects all relevant information on the organization from the central office and mails this information to the auditor. This includes the organization’s past two annual reports, its permit application, relevant inspection reports, and supplier information. When the auditor is able to begin conducting

the audit, he contacts the organization by phone and informs its representative of the specific records that will be needed to conduct the audit. An arrangement is then made for the auditor to travel to the organization and obtain these records. This record request is followed up with a letter to the organization. Upon the initial visit to the organization, the auditor will also attend a gaming session.

The audit is then conducted, and if, during the course of the audit, it is discovered that additional information is needed, the auditor will contact the organization and either resolve this over the phone or schedule another visit to the organization. The audit report is then written and forwarded to the audit manager by email, revised, and disclosed at an exit conference held between the auditor and the organization. The auditor asks that the officers of the organization be present at this conference, as well as those individuals actually working with the charitable gaming accounts. Previously, auditors were only asking the officers to be present, but because these individuals were often unaware of the details of their organization's charitable gaming activities, the members directly involved in the management of charitable gaming were also asked to attend.

CGC staff report that, typically, organizations accept the findings and recommendations of an audit, which are followed up in a formal letter of confirmation from the CGC. If an organization disagrees with the audit findings, the CGC holds an informal fact finding conference attended by the organization, the auditor, the audit manager, the administrative/licensing manager and the administrative coordinator. The issue is usually resolved via a compromise

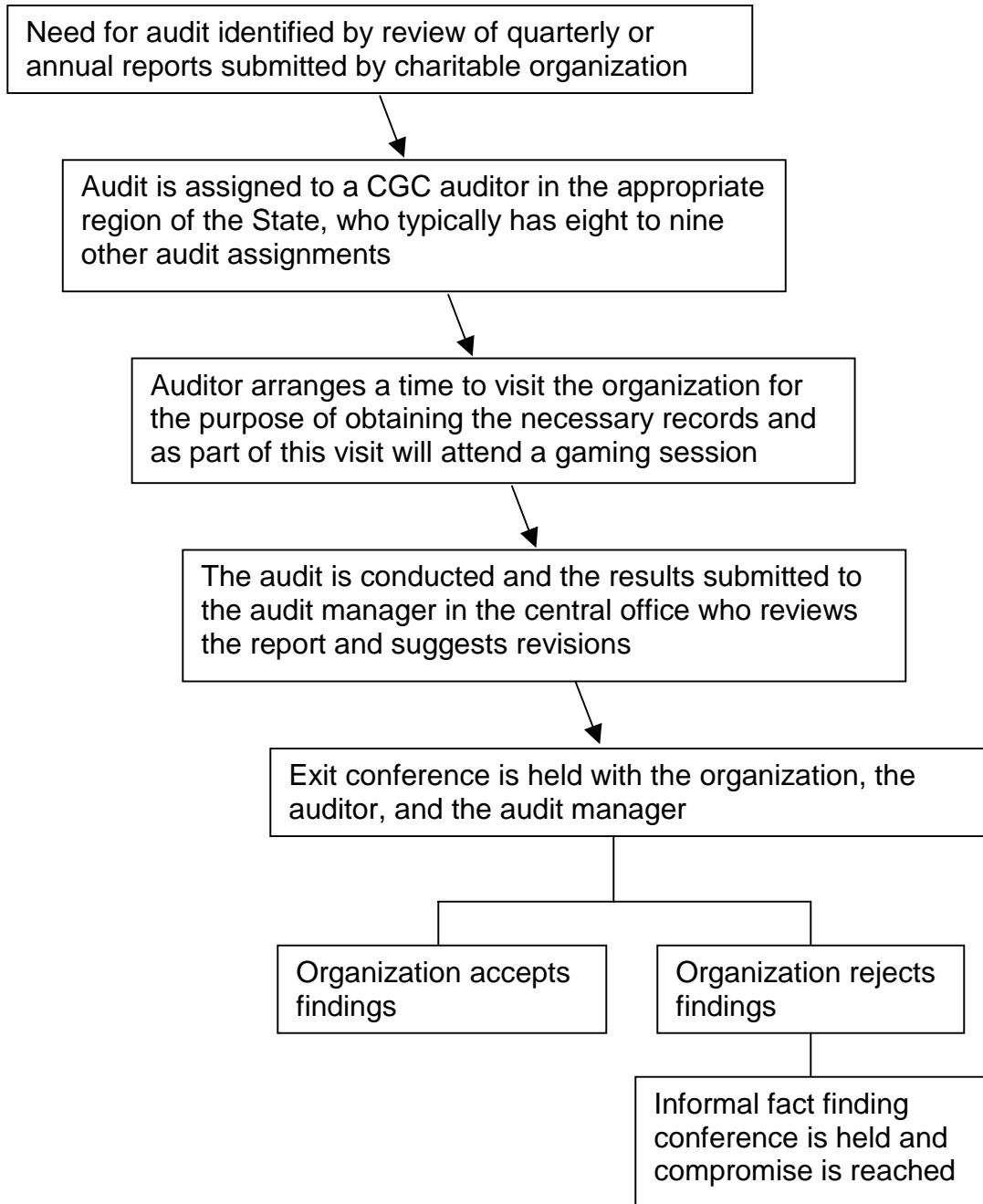
between the CGC and the organization, with the objective being that the organization will continue its charitable gaming activities, but improve its record keeping.

The JLARC staff mail survey asked respondents if they had ever been audited by the CGC and, if so, if the audit was conducted in a professional manner. Forty-two percent reported having been audited by the CGC, with 97 percent of these organizations reporting that audits were carried out professionally. Figure 5 illustrates the steps in a typical field audit process.

Audits Routinely Find Problems. In 1998, out of the 747 permitted organizations, 58 organizations were audited by the CGC. (Prior to 1998, audits of charitable gaming organizations were not conducted.) In 1999, 151 audits were completed, representing 148 of the 746 organizations permitted to conduct gaming that year. In 2000, 43 audits were completed, representing 33 organizations out of 754 permitted organizations. Table 7 summarizes the data on audits conducted from 1998 to the present. The large difference in the number of organizations audited in 1999 and 2000 reflects the switch from random audits of limited scope to comprehensive audits targeted at organizations with a suspected problem.

In 2001, 53 audits were conducted, representing 50 of the 727 permitted organizations. As of the end of October 2002, 85 audits have been completed, representing 70 organizations. With the recent automation of the financial report data, audit staff are better able to target organizations for specific issues and increase the number of these targeted organizations that can be audited.

Figure 5
Steps in a Typical CGC Field Audit



Source: Charitable Gaming Commission.

Table 7 Audits Conducted from 1998-2002 (for Federal Fiscal Year Financial Reports, Ending September 30)							
Year	Permitted Organizations	Audits Conducted	Organizations Audited	Organizations Not Audited	Findings	No Findings	Audits with Missing Findings
1998	747	58	58	689	N/A	N/A	58
1999	746	151	148	598	N/A	N/A	151
2000	754	43	33	721	32	3	8
2001	727	53	50	677	46	1	6
2002	611	85	70	541	70	0	0
Note: The CGC did not report findings for some audits conducted in 2000 and 2001. Audit findings were not recorded by the CGC in 1998 and 1999. 2002 data on the number of permitted organizations are incomplete, given that the data are from a partial year. Audits conducted in a given year may have been of organizations identified in a previous year as needing an audit. Source: Charitable Gaming Commission analysis of audit data.							

The Charitable Gaming Commission only began systematically recording its audit findings in 2000. For 2000, data were available on 35 audits, and 32 of them had a problematic finding. For 2001, data were available for 47 audits and 46 of those had a finding. The CGC did not report any findings for some audits conducted in both 2000 and 2001. Finally, all audits conducted in 2002 so far have had a problematic finding, principally because of changes in the CGC's approach to selecting organizations for field audits.

According to the Charitable Gaming Commission, most of the problems uncovered from field audits are the result of organizations not fully understanding the CGC's regulations on record keeping, their charitable giving requirements, or

other areas of proper game management. While some abuses may be deliberate, CGC staff have contended that many of the problems are due to a lack of knowledge on the part of these organizations. Additionally, CGC staff have stated that most organizations that are not meeting their charitable giving requirements are failing due to poor game management and turnover among gaming volunteers.

Underreporting of gross proceeds is also a typical finding of audits. The results of 75 audits conducted from October 1, 2001 to September 30, 2002 (the charitable gaming fiscal year) indicated that 54 organizations underreported their gaming revenue by a total of \$6,271,609 with an average of \$116,141 underreported per organization, ranging from \$2,623 to \$500,711. Such underreporting of gaming revenue represents a potential loss of substantial revenues for charitable purposes.

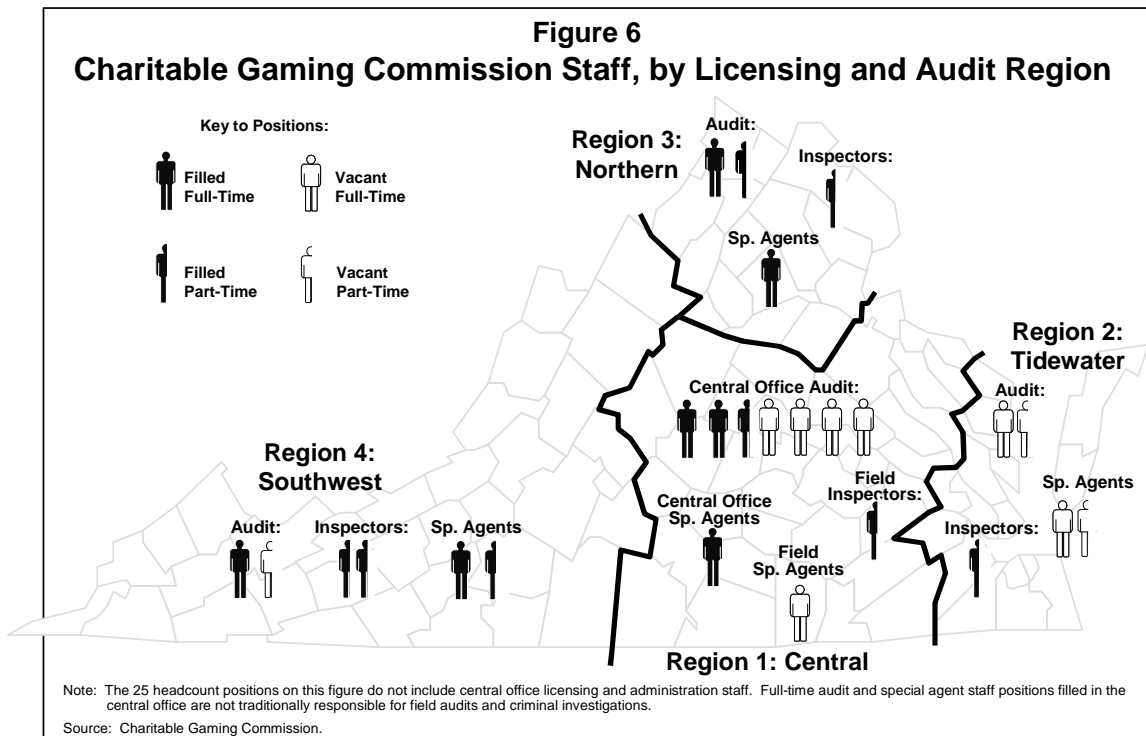
Staffing of the Audit Section Is Inadequate

The audit section of the CGC is allocated nine full-time positions for audit personnel and, organizationally, both a full-time and a part-time auditor are allocated to each of the four regions of the State. Currently, there are only four full-time and two part-time auditors employed at the CGC. Two of these full-time auditors are in management positions and do not traditionally conduct field audits. Four of the vacant full-time audit positions were recently granted to the CGC for the fiscal year 2003-2004 biennial budget. As a result of fiscal year 2003 budget reductions, the CGC has proposed the elimination of two of these positions and will not be filling the other two. There are currently no auditors

assigned to the Tidewater region. Figure 6 summarizes the number of current vacant and filled positions for regional staff.

Only two of the CGC's auditors hold professional audit certifications – the audit manager and the audit coordinator. The audit personnel that actually conduct field audits of charitable organizations across the State are not professionally certified auditors. CGC staff have stated that it is difficult to hire individuals with professional audit certifications or accounting degrees as the unavailability of fringe benefits for part-time positions limits the applicant pool. CGC staff have also stated that because of the simplicity of the demands of these types of audits, professional certification and training are not necessary.

With the exception of the audit manager and the audit coordinator, all audit staff are responsible for conducting field audits of charitable gaming organizations in the four regions of the State. One part-time and two full-time auditors assigned to the Central region work from the central office of the CGC. Auditors assigned elsewhere work from their homes. CGC staff have stated that this is problematic because working from home is potentially detrimental to the productivity of its employees. While the CGC would like to be able to audit each organization at least every three years, there are not sufficient resources to do this. Additionally, it has been reported to JLARC that in the coming year, the CGC will likely be able to audit only half of those organizations identified as needing an audit. Audits will be prioritized according to the amount of revenue generated by the organization's gaming activities.



CGC auditors are typically assigned eight or nine audits at any given time. CGC staff state that because of the auditor's workload, he may not commence an audit for weeks or even months after it is assigned. While waiting for an organization's records to be gathered either by the central office of the CGC or the organization itself, the auditor typically begins another audit. CGC staff report that when the information is received for the first audit, the auditor must then switch focus.

CGC staff have stated that it takes anywhere from six to nine weeks to complete an audit. However, records have reportedly been held for lengthy periods of time.

One organization reported that its records had been held by the CGC for over one year. The organization's financial records were turned over to the CGC for auditing purposes and during the course of the audit, the auditor left the CGC. When the organization inquired as to the status of its

records, CGC staff reportedly informed them that although the audit had not been reassigned, the agency intended to retain the records until the audit was completed.

CGC staff have suggested that if the number of audits conducted per person were reduced, the quality of the audits could be improved. Additionally, the amount of time required to conduct an audit, and thus retain the records of organizations, would be reduced.

The Supervision and Training of Auditors Needs Improvement. The CGC does not provide systematic training to new audit staff, despite the fact that it has acknowledged that acclimation to the charitable gaming environment can be difficult even for auditors experienced with nonprofit organizations. This, in addition to the fact that regional auditors work from their homes with little interaction with other audit staff, calls into question the quality and productivity of their work.

Despite the lack of individual training for new auditors, the CGC attempts to hold training sessions for all audit staff on a quarterly basis, with the last training session being held in July 2002. Typically, the purpose of these quarterly meetings is to update the auditors on any recent developments in the agency. Attendance at these trainings is mandatory. Since initiating training in 2000, the CGC has conducted training in seven of the 11 quarters.

The CGC Has Not Allocated Adequate Resources to Accomplish its Audit Goals. Although the CGC views the audit function as an essential component in ensuring the integrity of the charitable gaming industry and maximizing the gaming proceeds contributed to charitable purposes, it has not established an adequate structure to effectively meet the financial oversight

demands of the more than 600 organizations currently permitted to conduct gaming. Audit goals have continually been adjusted downwards, resulting in a large number of organizations that will not be audited despite a demonstrated need for the audit.

The structure of the audit section is problematic. The majority of the CGC's auditors work from their homes with little accountability to the central office. The training provided to audit staff has been inadequate, productivity levels have been questionable, and turnover rates have been high. CGC staff report that eight auditors have left the agency in the past four years for other opportunities. Additionally, the CGC has had 12 part-time auditors for four part-time positions since August 1997, when the agency first began to fill these positions. Part-time auditors remain employed at the CGC for approximately a year and a half and have the highest turnover rate of all CGC staff with regulatory responsibilities.

The field auditors working from their homes have also lacked access to the most accurate data on the organizations they are auditing. In order for them to begin their research on an organization's financial activities, they must wait on staff in the central office to provide this to them. It has been suggested by the CGC that because the records of organizations can be obtained by audit staff without their having to visit the organization, moving all regional audit staff to the central office would increase productivity and reduce the amount of turnover in auditors. Additionally, new auditors would have more opportunities for training if they were housed in the central office.

According to CGC staff, approximately 242 organizations were identified as needing audits for calendar year 2002, based on the organizations' annual reports (Table 8). Seventy-six of 242 were identified as having excessive prize amounts, but none of these organizations have been audited. Twenty-five organizations have granted gaming discounts to players in excess of what is allowed under the CGC's regulations, but only five of these organizations have been audited. In addition, 141 of 242 organizations have not met their charitable giving requirements, but only 21 of these have been audited. An additional 390 organizations have been identified as needing an audit based on the fact that the CGC has never audited them. The CGC audited a total of 70 organizations in calendar year 2002, the majority of which were identified in previous years as needing an audit.

Recommendation (6). A greater emphasis should be placed on training organizations in how to properly manage charitable gaming activities in compliance with charitable gaming laws and regulations.

Recommendation (7). All auditors should be hired on a full-time basis and be housed within the central office, making field visits when necessary.

Recommendation (8). Audit staff should plan and execute their work in a way that decreases the length of time records are held for audit.

Recommendation (9). The General Assembly may wish to consider reallocating to the Charitable Gaming Commission the two vacant auditor positions that have been eliminated by the recent budget reductions. Additionally, the Charitable Gaming Commission should be permitted to fill all full-time vacant auditor positions, restoring the audit division's staff allocation to nine full-time positions.

Table 8 Organizations Newly Identified for Financial Audits in 2002			
Audit Reason	Number Identified	Number Audited	Total Outstanding Audit Needs
Excessive Prize Payouts	76	0	76
Excessive Player Discounts	25	5	20
Insufficient Charitable Giving	141	21	120
Never Audited by the CGC	390	0	390
Total	632	26	606
Note: CGC staff have indicated that there is some overlap among these categories, but were unable to estimate the extent of this overlap. Therefore, the actual number of organizations identified as needing an audit in this table is greater than the number of organizations currently holding a charitable gaming permit. Source: JLARC staff analysis of information provided by the Charitable Gaming Commission.			

The CGC Has Suspended the Permits of Organizations Failing to Meet Their Charitable Giving Requirements

As mentioned, one responsibility of the audit division is monitoring whether or not organizations are meeting their charitable giving obligations. The CGC's regulations state that "if an organization fails to meet its minimum use of proceeds requirement, its permit shall be suspended or revoked based on the deficiency in the use of proceeds." The automated data on the suspensions and revocations of permits were not sufficiently accurate to assess these records fully. However, the CGC was able to provide the following information. Thirty-nine organizations have had their gaming permits suspended since the

creation of the CGC. Eighteen of these suspensions occurred in 2000 and 21 occurred in 2001. The average length of time for these suspensions was 20 days, ranging from 10 to 40 days. All but one of these organizations had their permits suspended because of their failure to meet their charitable giving requirements. JLARC staff found no evidence of a permit having ever been permanently revoked by the CGC.

The charitable gaming statutes give the CGC the authority to sanction those organizations that fail to comply with charitable gaming law or with CGC regulations (*Code of Virginia* §18.2-340.20 and §18.2-340.36). Only one permit has ever been suspended for reasons other than the organization's inability to meet its charitable giving requirements.

Due to the importance of the charitable giving requirement and the consequences delineated in the CGC's regulations for organizations failing to meet their required charitable giving amounts, CGC staff must thoroughly understand the intent of this requirement and how it is calculated. However, JLARC staff observed instances in which agency staff demonstrated a lack of understanding about this requirement.

During one meeting with a group of Charitable Gaming Commission staff members, JLARC staff asked if gaming organizations' charitable giving requirement was based on their "gross revenue" or on their "adjusted revenue." The staff exhibited confusion surrounding how the percentage was calculated. Some stated that it was calculated based on gross revenue as stated in the Code of Virginia, while others argued it was based on adjusted revenue. Since these staff could not agree on how the charitable giving percentage was determined, the agency's administrative and licensing manager asked the audit manager to attend the meeting and clarify the issue. The audit manager reported that the

required charitable giving amount is calculated based on the organizations' adjusted revenue and not gross revenue. The audit manager later reported in a meeting with JLARC staff that the CGC may have incorrectly interpreted this requirement.

The agency defines adjusted revenue as gross revenue minus discounts, interest income, funds from non-gaming sources, and refunds from the CGC. The *Code of Virginia* defines gross revenue as "the total amount of money received from charitable gaming before the deduction of any expenses, including prizes" (Section 18.2-340.16 of the *Code of Virginia*). The audit manager could not explain why the CGC required organizations to calculate their charitable giving requirements based on adjusted revenue and not gross revenue. JLARC staff also found additional evidence while reviewing Commission meeting minutes that suggests agency staff lack a clear understanding about the charitable giving requirements of gaming organizations:

Agency staff reported during the March 19, 1999 Commission meeting that their original report on organizations that had failed to meet their charitable giving requirement for the 1998 gaming year was inaccurate. Staff were not sure which organizations had actually failed to meet this requirement. Minutes taken during this meeting suggest the chairman was irritated with the CGC staff for submitting an inaccurate report and he directed the commissioners to disregard the March 9 report. He also told staff not to provide the commissioners with any additional inaccurate reports because the CGC could accidentally harm organizations if it suspended or revoked their permits based on faulty data.

While any organization is likely to evidence some inconsistency in staff interpretations of complex statutes and regulations, CGC staff appeared less knowledgeable and consistent in their responses to JLARC staff than is usual. Given the nature of the volunteer staffing arrangements often used in charitable

organizations, the ability of the CGC staff to provide clear and consistent directions is essential.

Perhaps recognizing the role of volunteers in the regulated community, the current approach of the CGC staff is to be more lenient on permitted organizations than is technically authorized by the charitable gaming statutes. For example, if an organization does not meet its charitable obligation requirement for the year, rather than suspending its permit, the CGC provides them the option of making up the difference in the next year. There are provisions for making up a deficiency in the charitable giving requirement in the regulations, but they are regarding a deficiency of less than one percentage point.

CGC staff have acknowledged allowing organizations to make up deficiencies exceeding one percent. For example, an organization required to commit 12 percent of its gaming proceeds to charity that only commits ten percent will not have its permit suspended, but will be required to contribute 14 percent of its proceeds to charity in the subsequent year. CGC staff indicated that this approach is based on the desire to keep charitable fundraising activities going, and avoidance of possible political repercussions the CGC would be subject to if it imposed harsh sanctions on charitable organizations. Given the charitable nature of the organizations regulated by the CGC, its lenient approach to permit suspension and revocation seems justified.

THE ENFORCEMENT DIVISION HAS HAD SOME SUCCESS

One of the principal purposes of the Charitable Gaming Commission is to prevent fraud in the industry. Since 1996, the CGC recommended that criminal charges be filed in 33 cases that resulted in 25 convictions. This represents a credible deterrent to fraud in the industry. The enforcement division of the Charitable Gaming Commission serves to monitor the gaming activities of organizations by addressing various types of complaints filed against charitable gaming organizations, by conducting performance audits or inspections, and by investigating alleged criminal activity occurring within these organizations. This section includes charitable gaming inspectors, special agents, a part-time audit/enforcement aide, and a part-time investigative aide who records complaints filed with the CGC and conducts undercover criminal investigations when requested. While the CGC has always incorporated an enforcement function into its regulatory approach to charitable gaming, the structure of this branch of the CGC has changed since its creation. Prior to 2000, the inspection function of the CGC fell under the purview of the audit division. Inspectors were transferred to the enforcement division in order to better coordinate the efforts of inspectors and special agents. It is clear that there is further opportunity for additional coordination of staff responsibility beyond this, which will be addressed later in this section.

Incident Reports Often Initiate CGC Oversight

One function of the enforcement division is to keep a record of all complaints filed against an organization. These take the form of “incident

reports” and can come from the general public or from the CGC itself (e.g., as the result of an audit in which criminal activity is suspected). The special agent in charge reviews these reports and forwards them to the appropriate CGC staff for follow-up. For example, a complaint filed against an organization because it is suspected that the organization is gaming without a license would be forwarded to the licensing division.

This review found that, with the exception of incident reports addressed by the enforcement staff, data on whether or not these complaints are resolved is not systematically or centrally maintained. Additionally, incident reports that were referred outside of the enforcement division and which have been labeled in the database as “closed” have not necessarily been resolved. Rather, they have simply been forwarded on for follow-up and are thus no longer the responsibility of the enforcement division. This makes it difficult to assess how effectively the CGC has been able to resolve these complaints.

Charitable Gaming Commission Inspections

While the role of charitable gaming inspectors has traditionally been to exclusively evaluate organizations’ compliance with charitable gaming laws and regulations, they have recently begun to provide on-site training and support to charitable organizations as needed. All inspectors are part-time employees who work from their homes in the four regions of the State. They generally work non-traditional hours coinciding with charitable gaming activities that tend to occur during weeknights or on the weekends. Charitable gaming inspectors typically have either law enforcement or tax compliance backgrounds. Currently there are

five inspectors employed by the CGC: one in each region with the exception of the Southwest region, which has two.

JLARC staff obtained data from the CGC indicating that in 2001, the six inspectors then employed by the CGC averaged 106 inspections each, with a total of 635 inspections conducted that year. (Organizations may be inspected more than once.) Accurate data on inspections are not available prior to 2000. Data on the average number of inspections conducted per inspector each year since 2000 are presented in Table 9. Due to the turnover in inspectors during 2002, the administrative coordinator for the CGC and the agency's Executive Secretary both conducted inspections.

Table 9 Inspections of Gaming Organizations from 2000 to 2002					
Year	Permitted Organizations	Inspections Conducted	Organizations Inspected	Organizations Not Inspected	Inspections per Inspector
2000	754	481	384	370	69
2001	727	635	444	283	106
2002	611	332	236	375	55
Note: In 2002, there are 172 organizations permitted to conduct one-time raffles that the CGC does not inspect. Because the Executive Secretary has only conducted one inspection in 2002, this inspection is not included in calculating the number of inspections conducted per inspector for that year. Source: JLARC staff analysis of data provided by the Charitable Gaming Commission.					

The CGC aims to annually inspect the majority of organizations permitted to conduct charitable gaming. Organizations may be inspected more than once in a given year. In 2000, 481 inspections were conducted, representing 384 out of 754 permitted organizations. In 2001, 635 inspections

were conducted, representing 444 out of 727 permitted organizations. In 2002, 332 inspections have been conducted, representing 236 out of a total of 611 permitted organizations. In 2001 and 2002, the CGC employed six inspectors. In 2000, seven inspectors were employed.

Organizations permitted by the CGC to hold bingo games are inspected annually, with the exception of volunteer fire departments and rescue squads. The CGC does not routinely inspect one-time raffles. Besides routine annual inspections, an organization may be targeted for inspection because of complaints filed against it from a public source or because staff in the audit or licensing divisions have identified the need for an inspection.

The Process of Conducting an Inspection. The purpose of the inspection is primarily to observe the charitable gaming activities and evaluate the organization's compliance with the statutes and the CGC's regulations. Once an organization is selected for inspection, the inspector will arrive at the organization's charitable gaming facility unannounced and inform the game manager of his intention to inspect the game. Using the Commission-prescribed "Game Observation Program," which is a checklist of gaming activities, the inspector evaluates the organization's compliance with the charitable gaming laws and the CGC's regulations. This form is included in Appendix E of this report. This is done primarily by observing the conduct of the game, the facility, certain financial records, and the organization's record-storage policy.

Once the inspection is completed, the inspector discusses any deficiencies of the game with the game manager or other designee of the

organization and suggests ways to improve the management of the gaming activities so as to better comply with the law or increase the revenue generated by those activities. The inspector and the organization agree on an approach to correct the organization's deficiencies. The inspector then requests that the organization submit a copy of the reconciliation report from that night's gaming session as well as five reconciliation reports from previous gaming sessions, including the supporting bank deposit slips. A reconciliation report is the form organizations use to track their sales, prize payouts, and profit from their nightly bingo sessions.

An inspection letter referencing the findings of the inspection is prepared by the inspector for the president of the organization. JLARC staff were informed by a CGC inspector that there is no protocol for copying the organization's bingo manager on this correspondence. This reportedly causes problems because the bingo manager is ultimately the individual who will implement and oversee any changes to gaming activities. This letter asks the organization to respond to the findings within 30 days, identifying the changes that will be made regarding the inspector's findings. If the organization does not comply with this request, an informal fact finding conference is held with the organization. Once the organization has agreed to the findings and has identified methods for remedying any deficiencies, the inspector will return to the organization at a later date to confirm that these issues have been addressed. Eighty percent of organizations responding to JLARC's mail survey indicated that they had been visited by a

CGC inspector, with 99 percent of these organizations reporting that the inspections were conducted in a professional manner.

As part of the study, JLARC staff accompanied a Charitable Gaming CGC inspector on an inspection visit. This case study illustrates an example of what may occur should an inspector discover problems with the activities of an organization.

The CGC inspector discovered that the organization was selling illegal instant bingo tickets because the total potential winnings from this game would have exceeded by \$25 the statutory limit of \$500. He said that he would allow the organization to continue selling the tickets for that session, but that he would tell them that they could not sell them in future games when he reviewed his inspection findings with them. He said that for minor problems such as this he would not interrupt a game from being played.

Most inspections reportedly identify minor issues of noncompliance with charitable gaming regulations. Those that identify issues of financial mismanagement or possible criminal conduct are referred to either the audit division or a special agent respectively.

CGC staff conveyed different opinions as to the similarity of the functions of audit and inspection. One opinion favors the idea of further coordinating the roles of auditors and inspectors due to the similarity of their responsibilities and the lack of professional audit experience necessary for conducting charitable gaming audits. Conversely, while other staff agree that inspections do have an audit component, they are of the opinion that the scope of charitable gaming oversight extends beyond financial activity. Additionally, it has been suggested that if inspectors were to incorporate audit tasks into their routines, because of the length of time taken to complete an audit, fewer inspections would be

conducted. This is suggested as problematic because inspectors provide crucial information to special agents about the need for criminal investigations.

While there is evidence that the inspection function is important for identifying criminal activity in charitable gaming and with ensuring that games are operated according to charitable gaming law and CGC regulations, the audit function of the CGC serves very similar functions. Further coordination of the audit and inspection functions of the CGC would provide opportunities for increased oversight of charitable gaming. Increased audit capability would also continue to be a tool for identifying criminal activity, particularly given that most criminal activity within this industry is financial in nature.

Recommendation (10). Inspectors should be trained in the conduct of charitable gaming audits and incorporate audit tasks into their inspection responsibilities. Additionally, inspectors should obtain appropriate financial records from those organizations targeted for a field audit and deliver these records to the auditor in the central office.

Charitable Gaming Commission Law Enforcement

Currently, violations of charitable gaming law, and those delineated in §18.2-340.9 of the *Code of Virginia* in particular, result in charges of a Class 1 misdemeanor, with each additional day of violation constituting a separate offense. Prior to the regulation of charitable gaming by the State, any criminal abuses of the charitable gaming laws were investigated by local law enforcement authorities. In its original attempts to craft a structure of State oversight, the Joint Subcommittee Studying Virginia's Current Bingo and Raffle Statutes recommended in 1995 that the "State Police shall have the authority to investigate any violation of charitable gaming laws or regulations and shall assist

in the conduct of investigations by the Commission,” which was a departure from the previous charitable gaming laws that vested local authorities with this responsibility.

The initial draft of this proposed structure was circulated to “those interested persons who had participated in the joint subcommittee’s study since its inception.” This included the Virginia Bingo Association, comprised of charitable organizations, suppliers, and bingo facility operators. Among other recommendations, the Virginia Bingo Association suggested that the State Police role in investigating charitable gaming should be reduced to “discretionary” and that the Charitable Gaming Commission be “directly responsible for enforcement of charitable gaming laws and [be vested] with law-enforcement authority.”

The joint subcommittee accepted the Virginia Bingo Association’s changes to the proposed model, incorporating them into the proposed legislation that would create the Charitable Gaming Commission. Currently, §18.2-340.18.1 of the *Code of Virginia* states that:

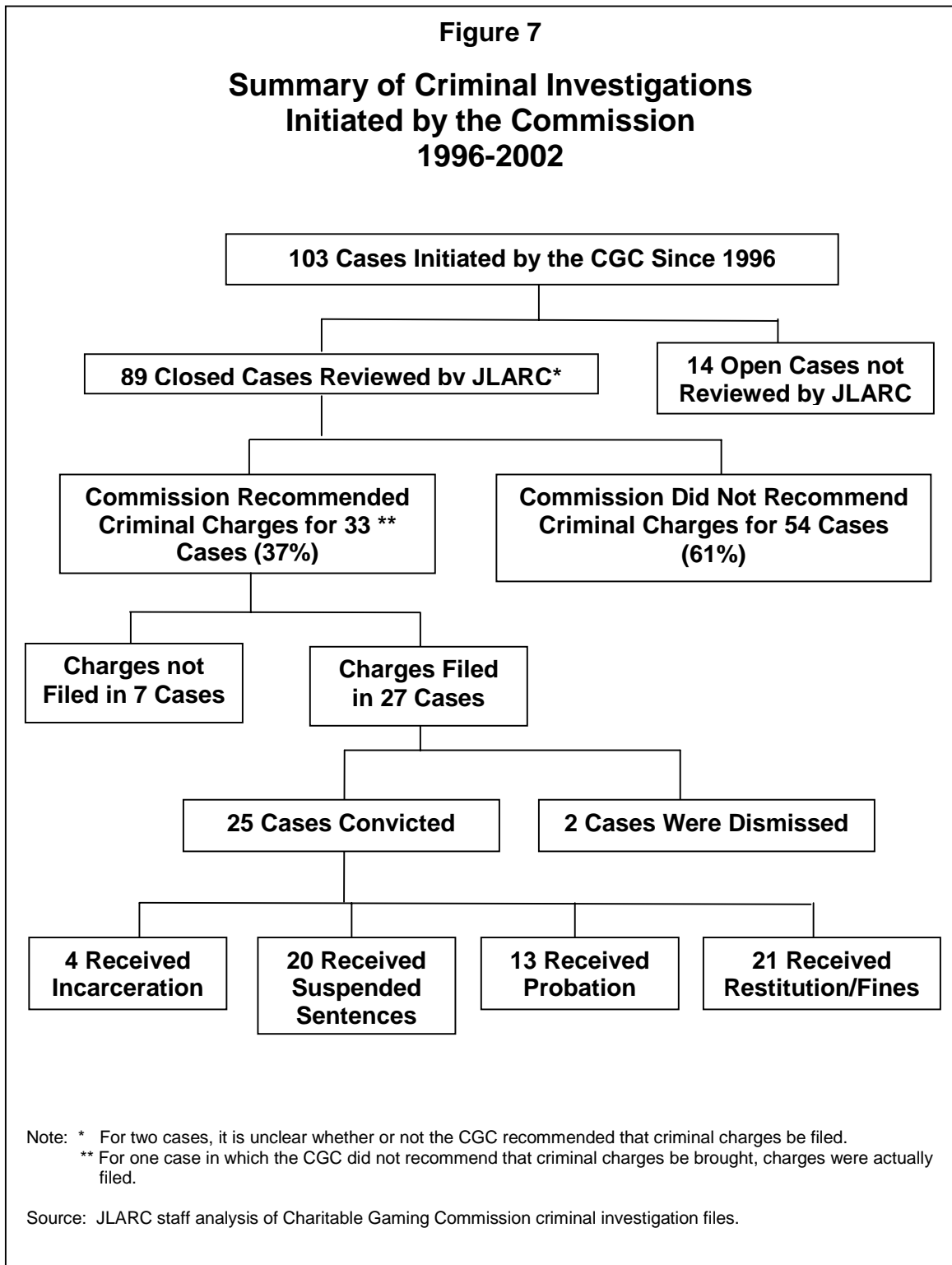
...the Commission may designate such agents and employees as it deems necessary and appropriate to be vested with like power to enforce the provisions of this article and the criminal laws of the Commonwealth as is vested in the chief law-enforcement officer of any county, city, or town.

Therefore, charitable gaming special agents have the authority to investigate crimes outside of the realm of charitable gaming. These agents are required to be armed with a CGC-approved firearm. The Virginia State Lottery Department also grants similar law enforcement power to its staff.

The CGC allocates resources for a full-time special agent to be located in each of the four regions of the State. Two regions, Tidewater and Southwest,

are also allocated a part-time special agent. These staff are overseen by the special agent in charge who is located in the central office. All special agents work from their homes and have backgrounds in law enforcement. Prior to the October 2002 budget reductions, all of these positions were filled. Currently, there are only two full-time special agents and one part-time agent employed by the CGC. Full-time agents are in the Northern and Southwest regions. The Southwest region also has a part-time agent. As a result of recent budget reductions for fiscal years 2003 and 2004, the CGC's staff was reduced by two full-time agents located in the Central and Tidewater regions and one part-time special agent, also located in Tidewater. This part-time agent was given an inspector's position in that region. Additionally, the hours of the part-time agent in Southwest have been reduced as a cost-saving mechanism. The effects of the October 2002 budget reductions will be discussed further in Chapter 4.

Results of Criminal Investigations. The Charitable Gaming Commission's Enforcement Division has been investigating criminal activity in the gaming community since 1996. CGC investigations have resulted in 25 case convictions, a sufficient number to present a credible deterrent to criminal activity. Figure 7 presents a breakdown of all investigation cases from their initiation to their resolution. (A single case may receive multiple sentencing orders, such as serving probation and being required to pay restitution.) While data are incomplete regarding the actual dates of these investigations, JLARC staff reviewed 89 investigation case files. CGC staff have stated that



these 89 represent all of the cases that have been closed since 1996. There are currently 14 open cases being investigated that JLARC staff did not review.

While the CGC has developed a form to consistently collect data on the nature and resolution of all criminal investigations, this form is not consistently used. Additionally, data on criminal investigations have not been automated as this is the last component to be added to the automated system. Efforts to automate all of the CGC's data were interrupted this year when CGC staff determined that available resources would no longer support the cost of contracting these automation tasks out to the State's Department of Information Technology. According to the Department of Planning and Budget, the CGC was appropriated \$275,000 for FY 2000 to develop an integrated computer system to store data on licensing, audit, and enforcement. However, because the CGC underestimated the cost of this project, staff state that it could no longer afford to contract this work out. As a result, efforts to automate its data have considerably slowed and the CGC currently has one position dedicated to accomplishing this task.

As the data on criminal investigations were not automated, JLARC staff reviewed all hard-copy files maintained on these investigations. This review revealed that out of 89 total cases, the CGC recommended that criminal charges be filed in 33 cases (37 percent). For two cases, it was unclear whether the CGC made such a recommendation. For the remaining 54 cases, a criminal investigation was not ultimately pursued due primarily to lack of evidence. Other

cases were resolved through efforts on the part of the organization in question and the CGC to reconcile the issue.

Additional reasons for not pursuing a criminal investigation included declination by the Commonwealth's Attorney to prosecute the case or referral of the case to the audit or licensing divisions of the agency. Twenty-seven cases resulted in charges actually being filed against an individual or individuals, though seven of the cases that were recommended for criminal charges were not pursued. In one case where the CGC did not recommend that criminal charges be filed, charges were filed anyway. Data on the years in which these charges were filed are incomplete for eight cases, but for those 19 for which information is available, 1996 and 2000 had the highest number of cases with criminal charges filed, with four and five respectively. Criminal charges have been brought by the CGC each year since its creation.

For those cases that did not result in charges being filed, the majority were due to a lack of evidence. Five cases were declined for prosecution by the Commonwealth's Attorney. Declination occurred for a variety of reasons, including reconciliation with the gaming organization, lack of sufficient evidence, and reluctance of victims to prosecute.

The following case study provides an example of a case where the allegations were reconciled with the gaming organization:

The CGC received initial information about this case from the bingo chairperson who reported that their bingo session came up short by \$1,088 in instant bingo sales.

An agency investigation revealed that many of the volunteers running the game were inexperienced high school students. Additionally, the game had implemented no cash

control procedures to verify the amount of instant bingo sales and payouts. The investigator interviewed the students who had worked the game and asked them if they had stolen the funds, even asking them if they would be willing to submit to a polygraph test. All of the volunteers denied taking the money. It is not clear whether a polygraph was actually performed on these students.

The investigation found that the game organizers did not have procedures to reconcile the amount of tickets issued and the money received for them. The gaming organization also did not complete a reconciliation sheet for instant bingo sales at the end of the session. The CGC attributed the reported shortage of funds to this lack of cash control procedures. This case was closed due to a lack of investigative leads and it was recommended that the organization implement adequate cash control procedures.

Embezzlement was the most frequent charge brought against charitable gaming organizations (Table 10). This is followed by the charge of conducting an illegal gambling operation. The range of charges and their counts that have been brought against individuals in the charitable gaming industry since 1996 is shown in Table 10. Ten cases resulted in multiple charges being brought.

For those 27 cases in which charges were filed, 25 resulted in a conviction and two were dismissed. For those cases in which convictions were obtained, there may have also been charges that were dismissed, but the case files were incomplete with regard to this information. Four cases resulted in actual incarceration ranging from two months to five years. The majority of cases resulted in a suspended sentence ranging from three months to ten years. Thirteen cases also included probation time in their sentences, ranging from six months to seventeen years and six months. Finally, restitution and fines were ordered in 21 cases, ranging from \$101 to \$55,000. The following two case

Table 10 Criminal Charges Brought Against Organizations 1996-2002		
Charge	Cases	Number of Counts
Embezzlement	17	1 to 11
Conducting Illegal Gambling Operation	9	1-4
Winning by fraud	2	1-2
Obtaining \$ Under False Pretenses	3	1-2
Syndicated Gambling	1	2
Grand Larceny	1	1
Illegal Compensation to Organizers	1	1
Money Laundering	1	1
Possession of Illegal Gambling Device	1	1
Illegal Use of Gaming Receipts	1	1
Tax Crime	1	1
Conspiracy to Commit Felony	1	2
Conspiracy to Embezzle	1	1
Conspiracy to Conduct Illegal Gambling Operation	1	2
Source: JLARC staff analysis of Charitable Gaming Commission Investigation Files.		

studies are examples of investigations by the Charitable Gaming Commission that resulted in convictions.

A complaint was received from a concerned citizen about possible embezzlement at the game. Investigators conducted an interview with the president of the organization, who provided the CGC with gaming records.

The president stated that the acting game manager had signed a written statement and confessed to stealing the profits from one box of instant bingo tickets. An analysis of the records revealed that 21 boxes of instant bingo tickets were unaccounted for. The acting game manager eventually confessed to this and embezzling \$8,357 in profits.

Charges were brought that the game manager sold or caused to be sold up to 21 boxes of instant bingo tickets and kept the profits for personal use. It was also charged that she destroyed or altered the original reconciliation records and prepared new documents which did not reflect the sale of these boxes.

This person was convicted of one count of embezzlement and received an eight-year sentence, with all but six months suspended.

* * *

Following the death of their granddaughter, two individuals attempted to create a memorial foundation in her name to support area schools and rescue squads. Raffle tickets were sold at \$100 a piece and the prize was to be a truck. The grandfather had hoped to sell 500 tickets, leaving a \$27,000 profit for the foundation. Only 178 tickets were sold, which was not profitable. The raffle was postponed three times because not enough tickets had been sold. Finally, the raffle was cancelled.

Individuals who had purchased tickets were sent a letter by the grandfather telling them that they were entitled to a refund. Alternatively, they could leave their money in the foundation and write their donation off on their income taxes. When individuals asked for a refund of their money, the grandfather continued to delay paying these refunds. In reality, he had already spent the profit on other things and did not have any money to refund. He eventually distributed refunds for 71 tickets sold. He allegedly embezzled up to \$17,000.

The grandfather asserted that some of the purchases were related to the foundation's mission, but the investigation revealed that this was not true and that these items were purchased long before he received approval from the IRS to establish a foundation.

The grandfather admitted his wrongdoing and received multiple suspended sentences and ten years of probation with the first two years being supervised. He was ordered to pay restitution in the amount of \$10,900 to the remaining 109 victims and directed by the court to not have any supervisory role in charitable gaming.

Most of the CGC's case files in which convictions were obtained did not include sentencing information. This information was obtained by the CGC following a request by JLARC staff. Additionally, case files were not maintained in the central office, but at the homes of individual agents, and were not organized with regard to any standard, resulting in incomplete and unclear case information.

Recommendation (11). The Charitable Gaming Commission should maintain original copies of all case material at the central office and implement data collection procedures that summarize all pertinent data for each case. This summary data should be included in the investigation file upon case completion.

Recommendation (12). The Charitable Gaming Commission should begin to systematically record the sentencing outcomes of all cases that receive convictions.

Over 90 percent of the 27 cases in which criminal charges were brought, based on work done by the enforcement division, resulted in convictions. Currently, however, the agency is understaffed with respect to special agents in that two of the four full-time agent positions are vacant and three of the four part-time positions are vacant. It is not feasible for three field agents, one of whom is part-time, to handle the demands of the cases that are currently open and pursue other leads.

Recommendation (13). The criminal investigation efforts of the enforcement division should continue to operate as they currently do. However, given that there are currently 14 open criminal investigation cases and the Charitable Gaming Commission has only three field agents

to take on these cases, the General Assembly may wish to reconsider the recent reduction of their special agent staff by two full-time positions.

IV. Governance of the Charitable Gaming Commission

JLARC's study mandate directed staff to assess the adequacy of the resources and management structure of the Charitable Gaming Commission (CGC). To comply with this directive, JLARC staff examined the financial structure of the agency to determine if available financial resources are sufficient to allow the CGC to meet its statutory objectives. JLARC staff also reviewed the adequacy of the management structure of the agency and examined the duties and responsibilities of the Charitable Gaming Commission members and the Executive Secretary.

The CGC's current budget has been cut due to budget reductions of State agencies for FY 2003 and FY 2004. The CGC's budget will be reduced by a total of 22 percent for FY 2003 and 22 percent for FY 2004. This has led the agency to eliminate staff and to scale back its operations. The agency may now lack a "critical mass" of staff and the financial resources needed to perform some functions as it has in the past.

The study also found that if the CGC is to effectively fulfill its statutory obligations, the governance structure of the agency should be reorganized. The seven-member supervisory board is not in a position to effectively oversee the agency's activities. Also, the ability of the Executive Secretary to manage the agency effectively is impaired by the position's dual accountability to both the Commission and the Governor.

To address the conditions observed during the study, JLARC staff developed three policy options that the General Assembly may wish to consider. Under the first option, the State would continue to have the CGC operate as it is currently structured. Under the second option, some modifications would be made to improve the governance structure of the Commission. Under the third option, given similarities between the two agencies, the Charitable Gaming Commission would be merged with the State Lottery Department to form a “Department of Charitable Gaming and the Lottery.”

FINANCIAL STRUCTURE OF THE CHARITABLE GAMING COMMISSION

JLARC staff examined the CGC’s financial structure to determine if available financial resources are adequate for the agency to fulfill the statutory requirements of regulating charitable gaming in the Commonwealth. The General Assembly created the Charitable Gaming Commission as a non-general fund agency entirely supported through revenue generated by fees that charitable gaming organizations submit to the agency. Even though the CGC is not funded by the State, the State still has the authority to establish the agency’s spending limits and to appropriate its revenue. As a result of State-mandated budget reductions, the CGC’s FY 2003 budget and FY 2004 budget will both be reduced by 22 percent. As a result, the CGC has eliminated four staff positions, deferred hiring additional P-14 staff, and essentially eliminated its training efforts.

The Commission Is Fully Supported by Non-General Funds

The Charitable Gaming Commission is supported entirely by fees submitted by charitable gaming organizations. These fees are defined in the

charitable gaming statutes and primarily include a permit fee and an audit and administration fee. Non-exempt organizations receiving permits to conduct charitable gaming activities must pay the CGC an annual licensing fee of \$200 as part of their registration. These organizations must also pay the CGC an audit and administration fee that is currently 1.125 percent of their gross gaming revenue. CGC fees generated revenues of \$3.2 million in FY 2002. Of this, the CGC spent \$2.2 million, raising its fund balance to \$3 million. Table 11 presents

Table 11 Financial Data for the Charitable Gaming Commission (FY 2002)	
<u>Fiscal Category</u>	<u>Amount</u>
Beginning Balance	\$ 1,990,677
Revenues	
Application permit fees	\$ 3,238,616
Interest	5,071
State asset forfeiture	2,138
Total revenue	\$3,245,825
Expenses	
Salaries and fringe benefits	\$1,658,459
Contractual services	342,299
Supplies and materials	22,899
Transfer payments	8,273
Continuous charges	76,974
Equipment	61,158
Total expenses	\$ 2,170,062
Transfers to the General Fund	\$ 23,203
Ending balance	\$ 3,043,237
Source: JLARC staff analysis of data provided by the Auditor of Public Accounts.	

a summary of the CGC's revenues and spending for FY 2002 as reported to the Auditor of Public Accounts. (However, CGC staff reported in November 2002 that approximately \$3 million was generated through agency fees during FY 2002.)

While the CGC is not supported with State general funds, the State does have authority over the agency's spending and defines a certain amount of revenue that can be spent on agency operations each fiscal year. The State also determines the agency's maximum number of full-time staff needed to operate effectively. State appropriations to the Charitable Gaming Commission for each fiscal year are summarized in Table 12.

The Charitable Gaming Commission initially generated revenue from fees based on two percent of the gross revenue of charitable gaming organizations. As the CGC generated revenue in excess of its State appropriations in FY 1997, the CGC reduced its audit fee to 1.25 percent of gross gaming funds and refunded approximately \$1.1 million in surplus revenue to 450 organizations. Since the CGC continued to generate excess revenue, it further reduced its audit fee to 1.0 percent and established a nine-month moratorium on requiring gaming organizations to pay audit fees in FY 1999.

According to CGC staff, the agency generated surplus revenue resulting from an increase in the gaming organizations' annual gross receipts. They maintain that this was directly attributable "to more accurate financial reporting by the charitable organizations since they...[came]...under the

Table 12 Revenue Sources and State Appropriations for the Charitable Gaming Commission (FY 1996 to FY 2002)			
<u>Fiscal Year</u>	<u>Revenue Generated Through Fees</u>	<u>State Appropriations</u>	<u>Non-General Fund Positions</u>
1996	\$13,725	<i>a sum sufficient</i>	NA
1997	\$3,447,195	<i>a sum sufficient</i>	NA
1998	\$3,529,418	<i>a sum sufficient</i>	NA
1999	\$1,983,769	\$2,332,668	21
2000	\$2,336,711	\$2,623,948	21
2001	\$1,826,972	\$2,404,365	21
2002	\$3,041,792	\$2,405,394	26
Source: Charitable Gaming Commission, Department of Planning and Budget, and JLARC staff analysis of Virginia Acts of Assembly data.			

Commission's scrutiny." In FY 2002, however, the CGC increased its audit fee to 1.125 percent of gaming organizations' gross revenue and lifted its moratorium on audit fees. An analysis of Commission meeting minutes suggests that the increase was authorized in response to a potential reduction in revenue from charitable gaming organizations as a result of Senate Bill 1177 passed in 2001. (Senate Bill 1177 removed the sale of pull-tab games in private social quarters from an organization's reportable gross gaming revenue.)

In 1998 and 1999, the CGC did not submit any formal budget requests for an increase in full-time staff positions. In 2000, however, the agency requested four new classified staff positions: a new senior special agent, a new

full-time technology position, and upgrading two part-time positions to full-time positions. Additionally, four new part-time auditor positions were requested. While the Governor recommended that the agency receive these positions, the General Assembly did not approve them.

In 2002, the agency requested six new full-time positions: four new audit positions, one network position, and one accounting manager position. Five of these positions were granted (the network position was denied) raising the agency's maximum employment level from 21 to 26 positions. The Department of Planning and Budget reported that two of the four new audit positions have been eliminated due to the mandatory budget reductions, and the CGC has not filled the other two audit positions. However, the CGC was able to fill its accounting manager position.

Impact of Recent Budget Actions

As a result of the State's current fiscal situation, the CGC was directed early in 2002 to reduce its FY 2003 budget by seven percent and its FY 2004 budget by eight percent. This resulted in the transfer of \$187,963 to the general fund for FY 2003. The State will transfer \$216,730 of the CGC's appropriations to the general fund during FY 2004. The State again directed the CGC in October 2002 to reduce its budget by an additional 15 percent for FY 2003 and 14.4 percent for FY 2004. This revenue is scheduled to be transferred to the general fund as part of the revisions to the 2002-2004 Appropriations Act. Thus, the CGC's FY 2003 and FY 2004 budgets will both be reduced by 22 percent. As a result, the agency deferred hiring two auditors and eliminated two vacant

auditor positions. The agency also laid off two full-time special agents, eliminated one special agent position by transferring that staff member to an inspection position, and reduced the number of hours worked by a P-14 special agent. The CGC also deferred hiring additional P-14 employees above its current staffing level. In sum, the CGC eliminated four staff positions, laid off two classified employees, and reduced spending by \$366,291 for FY 2003. A summary of the impacts of the budget reductions is presented in Table 13.

Table 13 Impact of Budget Reductions on Charitable Gaming Commission		
	<u>Budget Impact</u>	
<u>Action</u>	<u>FY 2003</u>	<u>FY 2004</u>
Defer hiring P-14 employees above current staffing level	\$139,400	\$98,077
Defer hiring two auditors (positions have not been filled)	\$100,500	\$99,000
Eliminate two vacant classified auditor positions	\$97,675	\$0
Lay off one classified senior special agent in Region 1	\$13,500	\$48,755
Lay off one classified senior special agent in the Region 2 ¹	\$16,914	\$39,210
Lay off one P-14 special agent in Region 2	\$14,100	\$35,880
Reduce hours for a P-14 special agent in Region 4	\$18,030	\$26,370
Reduce discretionary spending by five percent	\$0	\$9,500
Reduction Base	\$2,441,853	\$2,474,325
Reduction Amount	\$366,291	\$356,852
Percent of Reduction	15.0%	14.4%
Note: The reduction base figures do not represent the CGC's official Appropriations Act funding levels because "technical adjustments" for certain personnel benefits expenditures are not included in the reduction base.		
¹ This staff member was transferred to an inspection position in Region 2.		
Source: Department of Planning and Budget, <i>Budget Reduction Plans for the 2002-2004 Biennium</i> .		

CGC staff reported that the State budget reductions have adversely affected the agency's ability to oversee the charitable gaming program. Since the CGC was forced to reduce the size of its audit staff, its ability to regulate charitable gaming organizations for compliance with the requirements of the program has been reduced. The loss of three law enforcement positions has limited its ability to investigate complaints alleging criminal activity by some gaming organizations. The CGC also eliminated its training program.

AGENCY OVERSIGHT BY THE CHARITABLE GAMING COMMISSIONERS AND EXECUTIVE SECRETARY NEEDS IMPROVEMENT

During the course of this study, JLARC staff reviewed the duties and responsibilities of the Charitable Gaming Commission members and the Executive Secretary to evaluate the effectiveness of the agency's management structure. The Charitable Gaming Commission consists of seven part-time citizen members who are appointed by the Governor to serve as a supervisory board responsible for overseeing the agency. As part of the Commission's oversight role, it appoints the Executive Secretary and approves the agency's budget request. It is also required to meet six times a year. The Executive Secretary reports to the Commissioners and is responsible for overseeing the agency's daily operations.

The current governance and management structure of the Charitable Gaming Commission hinders the effective accomplishment of the Commission's statutory mandates. The General Assembly established the Charitable Gaming Commission as a supervisory board composed of part-time citizen volunteers responsible for overseeing charitable gaming activities. The Commission lacks

expertise regarding charitable gaming, however, and meets infrequently. Past and present Commission members acknowledge that they must rely upon the Executive Secretary to keep them apprised of their duties and responsibilities. Further, past and present Commission members have not clearly understood their role as a supervisory board. For example, one of the principal duties of the Commission is the selection of the Executive Secretary. Former Commission members have stated that they felt compelled to appoint candidates “pre-selected” by the Governor for the position. The Commission’s inability to independently select candidates for the Executive Secretary position may partly explain why this position has experienced a high level of turnover.

Duties and Responsibilities of the Charitable Gaming Commissioners

The General Assembly created the Charitable Gaming Commission in 1995 as an executive branch agency within the Office of the Secretary of Administration. According to §18.2-340.17 of the *Code of Virginia*, seven individuals who reside in different geographic regions of the State are to be appointed to the Commission by the Governor, subject to confirmation by the General Assembly. Commission members serve at the pleasure of the Governor for four-year terms and are eligible for reappointment to serve a second term on the Commission. The *Code* requires the Commission to meet six times a year, and requires that four members must be present to form a quorum.

The Commission was established as a supervisory board by the General Assembly. According to §2.2-2100 of the *Code*, supervisory boards have oversight responsibility for agencies, including approving appropriations

requests and hiring agency directors. Under this model, agency directors are subordinate to the boards that appoint them. Section 18.2-340.18 of the *Code* outlines the powers and duties of the Charitable Gaming Commission. According to the *Code*, the Commission “is vested with jurisdiction and supervision over all charitable gaming” activities and “all persons that conduct or provide goods, services or premises used in the conduct of charitable gaming.” The *Code* gives the authority to the Commission members to hire agency staff to ensure that charitable gaming is conducted in accordance with the requirements of the law. Additional powers granted to the Commission under §18.2-340.18 of the *Code* include the authority to:

- establish regulations governing the conduct of charitable gaming activities;
- issue subpoenas for witnesses, administer oaths, and compel the production of records or the testimony of witnesses who appear before it;
- issue interim tax-exempt status certificates to qualified nonprofit organizations; and
- access the facilities or offices of organizations conducting charitable gaming activities for the purpose of securing records, investigating complaints, and conducting audits.

Oversight of the Agency by Commissioners Is Limited

This study found that the supervisory structure of the Commission is inadequate to oversee the operations of the agency. While the General Assembly created the Commission as a supervisory board, its members are part-time volunteers who lack a clear understanding of their role in supervising a State agency. One of the primary duties of the Commission is to appoint the Executive

Secretary. However, this review found that past administrations have strongly influenced which candidates the Commission members appointed to serve as the Executive Secretary.

Supervisory Structure of the Commission Is Not an Appropriate Oversight Structure. Members of the Charitable Gaming Commission primarily rely upon the Executive Secretary to keep them informed about agency operations. Reliance on the Executive Secretary and agency staff is so great that some present and past Commission members told JLARC staff that they did not feel that a “supervisory board” was the appropriate oversight structure for the Commission. As the statements below illustrate, these Commission members argued that as part-time citizen volunteers, they were unable to provide the agency with adequate oversight.

We were very challenged because we were a volunteer, part-time board and were at the mercy of the professional staff [and the] agenda and information presented the day of [the meeting].

* * *

With the exception of the chairman, we come down for an hour every other month. This is not enough time to seriously dig into necessary issues. When the legislature rolls around, things happen so fast...it's difficult for the agency to respond to the things that are going on through the board because we're a volunteer, part-time board.

One former Commission member asserted that a supervisory board composed of citizen volunteers is not an adequate oversight structure for charitable gaming, and thus should be eliminated. This individual observed that some members infrequently attended Commission meetings and did not appreciate the responsibility that came with supervising a State agency. This

former Commission member suggested that the agency should be located under the Office of the Secretary of Public Safety because its “most important work is law enforcement.”

Commission Members Appear to Have Limited Involvement in Hiring the Executive Secretary. The Charitable Gaming Commission is responsible for hiring the Executive Secretary. In theory, this practice should give the Executive Secretary substantial independence. However, several Commission members reported that past administrations “pre-selected” candidates for this position. In fact, one former Commission member informed JLARC staff that past administrations strongly influenced which applicants the Commission considered for the Executive Secretary position. This former Commission member described the involvement of the administration as being “sometimes helpful and sometimes [a] set...back” because they did not always identify what he felt were the best candidates for the position. In addition, one of the agency’s former executive secretaries told JLARC staff that the Secretary of Administration used his influence to get him appointed to the position.

The ambiguity of the relationship between the Executive Secretary, the Commission, and the administration may partly explain why there has been a high turnover among executive secretaries (Table 14). Since 1995, the Commission has appointed four executive secretaries. One of the executive secretaries told JLARC staff that he was removed by the administration and transferred to another job. In this case, the chairman of the Commission was informed of the Executive Secretary’s removal after the fact. The former

Table 14 Tenure of Commission Executive Secretaries	
First Executive Secretary	September 1995 to May 1996
Second Executive Secretary	November 1996 to May 1999
Third Executive Secretary	April 1999 to April 2000
Fourth Executive Secretary	September 2000 to Present
Source: Charitable Gaming Commission.	

chairman clearly did not understand that it was the prerogative of the Commission, not the administration, to hire and fire executive secretaries.

The current Executive Secretary was previously employed by the Commission as a law enforcement agent and became the CGC acting director after the departure of the third Executive Secretary. This individual was officially appointed as the Executive Secretary in September 2000.

The Commission Has Usually Achieved Its Meeting Requirement.

The *Code of Virginia* states that the Charitable Gaming Commission must meet at least six times a year and that four members must be present to form a quorum. If quorums do not exist, then the Commission is prohibited from discussing or voting on issues that impact the agency or program. The *Code* does not specifically state that quorums must be present at all six required Commission meetings. However, staff from the Attorney General's Office informed JLARC staff that the Commission must have quorums present at its six meetings to comply with §18.2-340.17 of the *Code*.

JLARC staff reviewed the Commission's meeting records to determine if it consistently met this requirement. This review found that the Commission conducted 54 official and unofficial (town hall, workshop, and public hearing) meetings through December 2002. The Commission only failed to meet its six-meetings-per-year requirement in 1998.

According to the Commission's current chairman, the Commission conducts "town hall" or "workshop" meetings in lieu of its official meetings if there are not enough Commission members present to form a quorum or if there is no "new business" to discuss. The chairman said the Commission conducts these meetings to fulfill the *Code's* meeting requirement. However, according to the Attorney General's staff, the Commission must conduct six meetings per year with quorums present to comply with the *Code of Virginia*.

OPTIONS FOR RESTRUCTURING THE STATE'S CHARITABLE GAMING PROGRAM

This study found several limitations with the current management structure of the Charitable Gaming Commission that should be addressed. To address these limitations, JLARC staff examined the regulation of charitable gaming in other states and reviewed a proposal of the Wilder Commission to consolidate all Virginia gaming activities under one organization. To address organizational concerns noted in the study, JLARC staff developed three policy options that the General Assembly may wish to consider.

Under the first option, the State would continue to have the Commission operate as it is currently structured, since the program is relatively new and has achieved some of its objectives. Under the second option, the

State could make some modifications to the agency's governance structure, such as reclassifying the Commission from a supervisory board to an advisory board and shift the responsibility for appointing the Executive Secretary from the Commission to the Governor. Under the third option, the State could merge the CGC with the State Lottery Department to form a "Department of Charitable Gaming and the Lottery."

Regulation of Charitable Gaming in Other States

Counting Virginia, 40 out of the 45 states in which charitable gaming is legal regulate the industry through a state government entity. In five states, regulation of charitable gaming remains the responsibility of local governmental entities. Approaches to state-level regulation of the industry vary across the remaining 40 states. Like Virginia, Kentucky, Minnesota, and Mississippi have established agencies that are responsible solely for overseeing charitable gaming or other forms of gambling. Other states, such as Alaska, Louisiana, and Pennsylvania placed this responsibility within agencies that are primarily responsible for government functions such as public safety, revenue, or lottery. A summary of approaches to charitable gaming regulation in other states is provided in Exhibit 8.

Consideration of the Wilder Commission Proposal

During the 2002 General Assembly, Governor Warner appointed a special commission (the Governor's Commission on Efficiency and Effectiveness) headed by former Governor Wilder to examine the State's current fiscal crisis and to make recommendations for reducing government spending.

The Wilder Commission released its preliminary recommendations in August 2002. One of these recommendations called for the creation of “an umbrella agency responsible for the lottery, pari-mutuel racing and charitable gaming.”

The Wilder Commission asserted that the State could save about \$351,000 in FY

Exhibit 8		
Charitable Gaming Regulation in Other States		
<u>Regulatory Body</u>	<u>Number</u>	<u>States</u>
Department of Revenue	12	Alaska, Arizona, Connecticut, Illinois, Indiana, Kansas, Louisiana, Nebraska, Pennsylvania, South Dakota, Vermont, West Virginia
Attorney General/Justice Department	4	Montana, North Dakota, Ohio, Oregon,
Department of Lottery	4	Idaho, Michigan, Massachusetts, Texas
Public Safety/State Law Enforcement	4	Georgia, Maine, North Carolina, Rhode Island
Independent Agency Responsible Solely for Gambling or Charitable Gaming	9	Kentucky, Minnesota, Mississippi, Missouri, New Jersey, New York, Virginia , Washington, Wisconsin
Other Type State Government Agency	7	Colorado (Secretary of State), Delaware (Department of Professional Regulations), Iowa (Department of Inspections and Appeals), New Hampshire (New Hampshire Sweepstakes Commission), New Mexico (Regulation and Licensing Department), Oklahoma (ABLE Commission), South Carolina (Tax Commission)
Local regulation	5	Alabama, California, Florida, Maryland, Wyoming
Total	45	
Source: National Association of Fundraising Ticket Manufacturers, 2002.		

2004, and thereafter \$500,000 annually by merging these similar government functions into one agency. These savings are not documented and it is unclear how they would be achieved. JLARC staff examined this recommendation and determined that merging the Charitable Gaming Commission (CGC) into the State Lottery Department appeared feasible due to the similarities between these agencies. (Specific similarities are discussed as part of Option 3.) JLARC staff did not conclude that pari-mutuel racing would integrate well with either the State Lottery Department or the Charitable Gaming Commission.

The General Assembly May Wish to Consider
Three Options To Address Governance Concerns Identified In This Report

To address the management and governance concerns identified during this study, JLARC staff identified three policy options that the General Assembly may wish to consider. They are: (1) continue the present structure of the CGC, (2) modify the CGC's governance structure, and (3) consolidate the CGC with the State Lottery Department. The benefits and challenges of these options are summarized in Table 15.

Option 1: Continue the Present Structure of the Charitable Gaming Commission, but Make Improvements to the Management of the Agency. Since its creation in 1995, the Charitable Gaming Commission has been somewhat successful in overseeing the State's charitable gaming program. The Commission is relatively new, and the General Assembly may wish to consider continuing the program as it is currently structured. Charitable gaming is a cash-intensive activity that should be regulated to limit the potential for abuses and to ensure that gaming organizations comply with State gambling

Table 15
Benefits and Challenges of Three Options
for Restructuring the State's Charitable Gaming Program

Option	Benefits	Challenges
#1: Continue the present structure of the Charitable Gaming Commission, but make improvements to the management of the agency	<ul style="list-style-type: none"> • Non-disruptive to the current system. 	<ul style="list-style-type: none"> • Management, operational, and structural deficiencies identified in this report may not be fully addressed.
#2: Modify the Charitable Gaming Commission governance structure by designating it as an advisory board, with the appointment of the executive secretary made by the Governor	<ul style="list-style-type: none"> • Changing the designation of the Commission from a supervisory board to an advisory board would more accurately reflect the capabilities of the Commission. • Making the Executive Secretary a gubernatorial appointee clarifies and improves accountability. • Altering the composition of the Commission to include some representation from participants in charitable gaming activities would make the Commission less dependent on staff. 	<ul style="list-style-type: none"> • Changes structure of current system. • Industry representation on Commission may influence decisions in favor of gaming organizations.
#3: Consolidate the Charitable Gaming Commission with the State Lottery	<ul style="list-style-type: none"> • Merging the Commission with the State Lottery could improve the professionalism of the regional CGC staff by allowing them to work in the Lottery Department's regional offices instead of their homes. • The Commission as an agency could benefit from the expertise that the State Lottery Department has in areas such as audit, information technology, and other areas of administration. • The merger could potentially produce some cost savings for the State by combining two independent agencies and reducing overhead and personnel expenses associated with operating two departments and boards. 	<ul style="list-style-type: none"> • The State Lottery Department and Charitable Gaming Commission have somewhat different purposes and organizational cultures. • Charitable gaming is conducted to produce funds to support charities, while the Lottery Department was formed to operate a lottery to generate State revenue. • The State Lottery tolerates little deviation from its rules and regulations. By contrast, the Commission regulates organizations that use volunteers and it tolerates minor violations.

Source: JLARC staff analysis.

requirements. While some problems with the current system have been identified and should be corrected, the CGC appears to offer a credible deterrent to the types of abuses that led to the creation of this agency.

The Charitable Gaming Commission has successfully overseen the transfer of gaming regulation from localities to the State, and it has successfully investigated and prosecuted a number of cases, providing a credible deterrent to further fraud and abuse. Under CGC oversight, the amount of charitable gaming revenue donated to charitable activities has also increased – from an estimated three percent at the time of its creation to approximately 13 percent by 2000.

Overall, it can be argued that the Charitable Gaming Commission has achieved the major objectives of the 1995 legislation that created it: the transfer of regulation of charitable gaming from localities to the State, an improvement in the amount of revenue donated to charities, and the prevention of widespread fraud and abuse in the industry. Given these accomplishments and the relative newness of the CGC, the General Assembly may wish to leave the governance structure of the Charitable Gaming Commission as it is. Improvement to the efficiency and effectiveness of the CGC could be made through the adoption of recommendations made earlier in this report.

Option 2: Modify the Charitable Gaming Commission Governance Structure by Designating It as an Advisory Board, with the Appointment of the Executive Secretary Made by the Governor. Despite the successes that the CGC has experienced in overseeing charitable gaming in Virginia, this study found that there are problems with the current management structure of the

Charitable Gaming Commission. The General Assembly may wish to consider three changes: (1) changing the designation of the Commission from a supervisory board to an advisory board, (2) making the Executive Secretary of the Commission a gubernatorial appointee, and (3) altering the composition of the Commission to include some representation from participants in charitable gaming activities.

Making the Executive Secretary a gubernatorial appointee could improve the effectiveness and accountability of the Charitable Gaming Commission. As a gubernatorial appointee, the Executive Secretary would serve at the pleasure of the Governor and be supervised by the Secretary of Administration. Such an arrangement would provide the agency with more direction than it presently receives from a part-time citizen board. JLARC staff observed during this study that present and past executive secretaries have not clearly understood their role in State government. While the appointment of the Executive Secretary by the Commission should insure the independence of this position, some executive secretaries have regarded the Secretary of Administration or the Governor as their “true boss.” Moreover, none of the executive secretaries appear to have taken advantage of the independence that is statutorily provided to them. In addition, members of the Commission have not had a clear understanding of their role and independence. Making the Executive Secretary an appointee of the Governor would remove the ambiguity that exists regarding this position and would place accountability for the program clearly with the Governor and the executive branch.

Ambiguity also exists regarding the role of the Commission itself. The General Assembly may wish to include language in §18.2-340.17 of the *Code* that reclassifies the Commission from a “supervisory” board to either a “policy” or an “advisory” board. The Charitable Gaming Commission has never fully appreciated the independence that it has as a supervisory board. One former Commission chairman told JLARC staff that he had been informed by the Executive Secretary that he (the Executive Secretary) had been removed from office by the Secretary of Administration. The chairman did not understand that it was the prerogative of the Commission to hire and fire the Executive Secretary.

This review found that the Commission has exercised only limited oversight of the Executive Secretary and the agency. The Commission is composed of part-time citizen volunteers who reside throughout the State. Some past and present members of the Commission acknowledged their limited ability to supervise the agency. A policy or advisory board structure would appear to be a more suitable role for the Commission, because it would remove the burden of supervision from the Commissioners while still taking advantage of members’ perspectives in developing and influencing charitable gaming policy in the Commonwealth.

The General Assembly may also wish to consider altering the present composition of Commission membership to include representation from participants in charitable gaming activities. While the board should predominately consist of citizen members without any involvement in charitable gaming, the designation of one or more members to represent the charitable

gaming community could be valuable. The operation of charitable gaming is a complex endeavor, and the presence of knowledgeable members on the Commission would provide valuable perspective and some needed independence from the agency staff.

Option 3: Consolidate the Charitable Gaming Commission with the State Lottery Department. While the Charitable Gaming Commission has been somewhat successful in achieving its overall objectives, this report has shown that it also faces challenges in governance, management, and administration. Problems with the appointment of the Executive Secretary and the supervisory role of the board were previously discussed. In addition, the Commission faces a number of challenges as a small agency with statewide permitting, auditing, training, and enforcement responsibilities. Combining the Charitable Gaming Commission with a similar organization – the State Lottery – could mitigate some of these problems.

To a degree, the Charitable Gaming Commission and the State Lottery Department perform similar functions related to regulating legalized forms of gambling in the Commonwealth. Merging the CGC with the State Lottery could potentially benefit charitable gaming by combining it with a larger agency with the infrastructure necessary to support its programs.

As noted earlier in this report, the CGC has recently reduced its audit and enforcement staff. As a consequence of budget cuts, it has also announced the suspension of its training programs. With these cuts, the agency may find itself operating at a level of marginal effectiveness. Regional staff already

operate out of their homes and have limited contact with central office staff. While changes recommended earlier in this report would improve operation of the agency, the current situation is a challenge to staff consistency and professionalism. If the CGC were merged with the State Lottery Department, its staff could work in the State Lottery's regional offices instead of out of their homes. The CGC as an agency could benefit from the expertise that the State Lottery Department has in areas such as audit, information technology, and other areas of administration. The merger could also produce some cost savings for the State by combining two independent agencies and reducing overhead and personnel expenses associated with operating two departments and boards. Four other states regulate charitable gaming through their respective lottery departments.

The benefits of merging the State Lottery Department and Charitable Gaming Commission would have to be measured against the potential adverse impacts such a merger might produce. At present, the Lottery Department and the Charitable Gaming Commission have somewhat different purposes and organizational cultures. Charitable gaming activities are conducted to produce funds to support charitable activities, while the State Lottery Department was formed to operate a lottery designed to generate revenue for the State. Consequently, the lottery returns only about 55 percent of its gross proceeds to players while charitable gaming typically returns about 75 percent of its gross proceeds to players. As both involve legalized gambling, it could be argued that the two operations are somewhat in competition with each other. Some

charitable organizations may conclude that the State Lottery Department is not an appropriate agency to regulate charitable games, as it is a competitor for gaming dollars.

The State Lottery Department is essentially a unitary governmental function that strictly oversees a monopoly activity. The lottery is largely oriented toward the sale of gaming instruments through private businesses. The State Lottery Department tolerates little deviation from its prescribed rules and regulations. Businesses that do not operate strictly in accordance with lottery rules quickly have their permits removed. Since 1999, the State Lottery Department has revoked the licenses of 149 businesses that sold lottery products.

By contrast, the Charitable Gaming Commission regulates charitable and fraternal organizations that use volunteers to manage charitable games and sell gaming products. The Commission and its staff try to facilitate the conduct of honest charitable games. Recognizing the role of volunteers in the process, however, the CGC tends to work with organizations that sometimes do not comply with the letter of the law. CGC staff tolerate minor violations in the interest of helping charitable organizations achieve their purposes. Consequently, the CGC has never revoked the license of an organization. (It has temporarily suspended 39 licenses.) It might be a challenge for a combined State Lottery Department/Charitable Gaming Commission to strictly enforce one set of rules, while flexibly tolerating minor violations of another set of rules.

Despite the potential challenges posed by a merger, there are potential administrative, managerial, and financial benefits of merging the Charitable Gaming Commission and the State Lottery Department. Consequently, the General Assembly may wish to consider the possibility of consolidating the Charitable Gaming Commission with the State Lottery Department.

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Appendix A

JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION STUDY RESOLUTION: CHARITABLE GAMING COMMISSION

The staff of the Joint Legislative Audit and Review Commission shall review the management and performance of the Charitable Gaming Commission. The study shall include, but not be limited to, the following areas:

1. Is the organization and management structure for the agency adequate to achieve its statutory objectives?
2. Does the Charitable Gaming Commission have the authority and the structure necessary to adequately oversee agency management and operations?
3. Does the agency have sufficient resources to implement its statutory mission?
4. Does the agency have adequate staffing to implement its statutory mission?

The review shall be conducted as part of JLARC's study directives included in HJR 773, HB 2865, and HJR 159. These resolutions generally require JLARC to study the spending, operations, duties and structures of boards, commissions, councils and other governmental entities in State government.

The staff shall report the findings and recommendations of its Charitable Gaming Commission study prior to the 2003 Session of the General Assembly.

Appendix B

COMMERCIAL LANDLORDS' INVOLVEMENT IN THE STATE'S CHARITABLE GAMING INDUSTRY

Charitable gaming organizations generally use one of three options for obtaining a gaming facility: (1) purchasing their own facility or using one they currently own, (2) renting a facility from another charitable gaming organization, or (3) renting a facility from a commercial landlord. The Charitable Gaming Commission (CGC) asserts that commercial landlords are becoming more involved in the management and conduct of charitable gaming activities than is allowed in the *Code of Virginia*. Additionally, it has been suggested that some landlords charge gaming organizations excessively high rents that undermine the ability of some organizations to make adequate financial contributions to support charitable activities. The CGC suggests that this hinders its efforts to increase the amount of charitable gaming proceeds that are committed to charitable purposes and challenges its ability to provide fair regulation of charitable gaming activities.

Statutory and Regulatory Provisions Governing Landlords

The State's current charitable gaming laws do not grant the CGC the authority to regulate bingo hall landlords; however, statutes exist that do contain provisions regarding the involvement of landlords in charitable gaming activities. For example, landlords are prohibited from charging organizations above fair market rental value for gaming facilities and from being involved in the management of charitable gaming activities. Despite these prohibitions, it has

been suggested that some landlords charge gaming organizations excessively high rents that hinder the ability of some organizations to make adequate financial contributions to support charitable activities.

The *Code of Virginia* defines a landlord as a person, agent, firm, association, organization, partnership, or corporation that leases a facility to a qualified organization to conduct charitable gaming activities. Landlords can be either commercial entities (such as business operations that own fully equipped bingo halls) or noncommercial entities (such as churches or fraternal organizations that rent their facilities to gaming organizations). Although statutory and regulatory laws do not grant the CGC regulatory authority over landlords, charitable gaming laws do contain provisions regarding certain landlord activities. Specifically, §18.2-340.33 of the *Code of Virginia* states that:

...no landlord shall, at bingo games conducted on the landlord's premises, (i) participate in the conduct, management, or operation of any bingo games; (ii) sell, lease or otherwise provide for consideration any bingo supplies...; or (iii) require...that a particular...supplier of bingo supplies or equipment be used by the organization.

Charitable gaming statutory and regulatory laws also prohibit landlords from making loans to gaming organizations, charging organizations above fair market rental value for the use of gaming facilities, or basing rent on gross receipts or on the number of players in attendance during gaming sessions. State law limits the number of days a facility can host bingo games per week: commercial halls may be used for bingo only two days per week and premises owned by charitable organizations can be used no more than four days a week (Exhibit B-1).

Exhibit B-1**Statutory and Regulatory Provisions
Governing the Conduct of Commercial Landlords**

Current charitable gaming statutory and regulatory laws prohibit landlords from:

- making loans to charitable gaming organizations;
- making payments to charitable gaming organizations unless payments are in accordance with the law;
- participating in the management of charitable games;
- selling gaming supplies to charitable gaming organizations;
- requiring charitable gaming organizations to purchase supplies from specific suppliers;
- charging charitable gaming organizations above fair market rental value for facilities;
- basing rent on gross receipts or the number of players attending games; and
- holding games in facilities more than two days per week (commercial landlords) or four days per week (premises owned by charitable organizations or local governments).

Source: JLARC staff analysis of Section 18.2-340.33 of the *Code of Virginia* and Section 11 of the Virginia Administrative Code 15-22-100.

**Commission Staff Assert That Some Commercial
Landlords Are Inappropriately Involved in Charitable Gaming**

Despite the statutory and regulatory laws governing the activities of landlords, CGC staff voiced concerns that some commercial landlords do not comply with statutory requirements. In particular, they pointed out that some landlords charge rents for gaming facilities that are above the fair market rental value, impairing the ability of organizations to meet their mandatory charitable giving requirements to donate a percentage of their gaming revenue to support

charitable activities. CGC staff stated that there is a strong correlation between high rents and the inability of organizations to meet their charitable obligations. CGC staff also maintained that many organizations in the Tidewater area (Region 2) face very high rents that impede their ability to meet the charitable requirement.

Concerning organizations that rented gaming facilities from commercial landlords in federal fiscal year (FFY) 2001, JLARC staff analyzed both “rent per session” and “use of proceeds” (UOP) for 90 organizations for which data and records were available at the time of the JLARC analysis. Based on this analysis, organizations in the Tidewater area paid higher rental fees per gaming session on average than did organizations in the other regions (Table B-1). This analysis also indicates that the Tidewater area had the highest concentration of organizations that failed to meet their UOP charitable giving requirement.

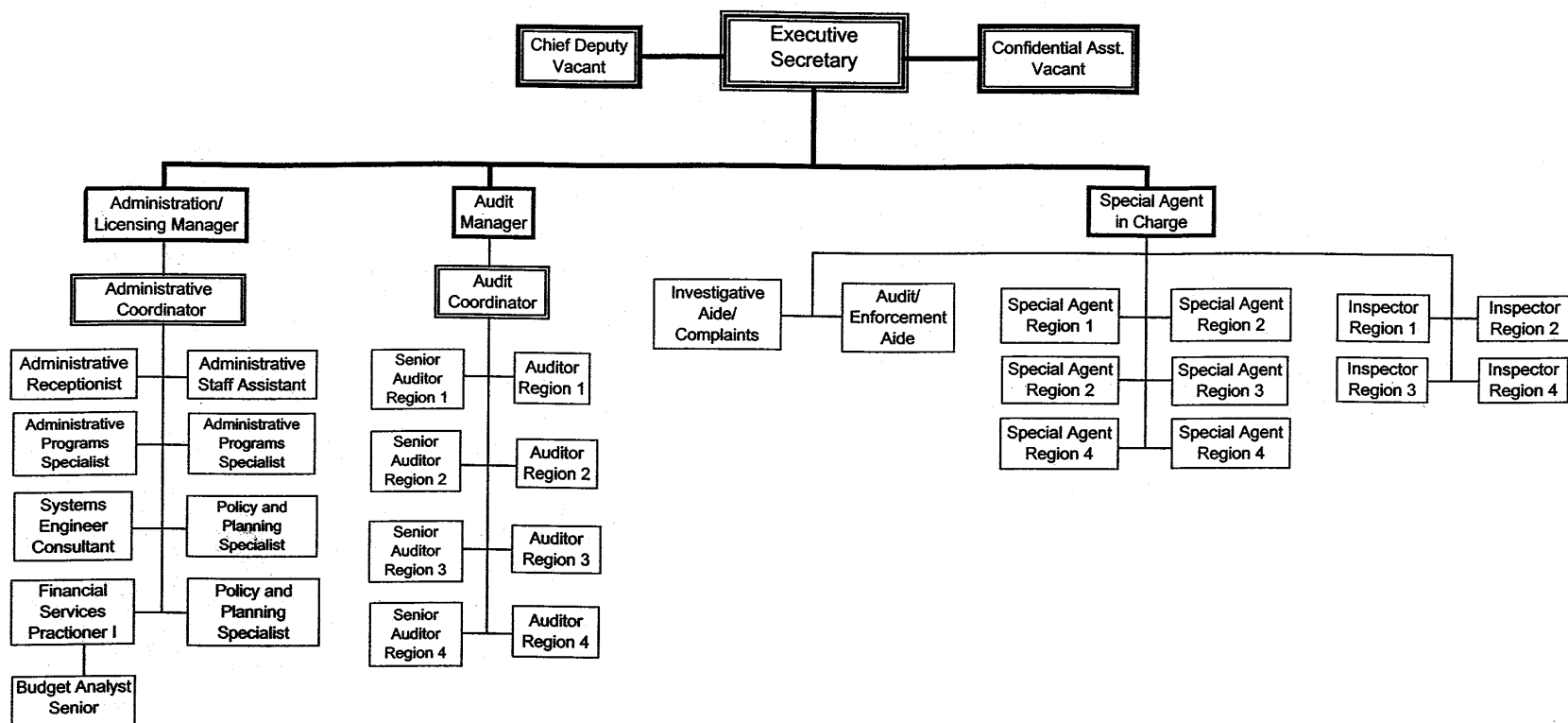
The data in Table B-1 may support the CGC’s argument that some commercial bingo hall landlords charge organizations high rents that hamper the organizations’ abilities to meet their charitable giving requirements. However, rents that organizations are charged and their ability to meet their charitable giving obligation are also influenced by other factors including the real property value of the gaming facilities, the demographic characteristics of the jurisdictions in which the games are played, the number of players attending games, the time of day that games occur, competition between gaming organizations, the type of equipment used in the gaming facilities, and higher-than-profitable prize payouts. Out of the 89 respondents to JLARC’s mail survey that reported renting their

premises from a third party, only six organizations indicated that their rental agreements were unfair. Two of these organizations are located in the Tidewater area.

Table B-1 Average Rent Paid Per Session by Organizations Renting from Commercial Landlords in FFY 2001			
<u>Region</u>	<u>Number of Gaming Organizations¹</u>	<u>Number of Organizations Failing to Meet UOP</u>	<u>Average Rent Per Session²</u>
1 (Central)	2	1 (50%)	\$750
2 (Tidewater)	61	35 (57%)	\$2,023
3 (Northern)	6	1 (17%)	\$1,966 ³
4 (Southwest)	21	5 (24%)	\$1,191
Total	90	42 (47%)	\$1,797
<p>Note: Organizations receiving special permits to conduct charitable games on specific dates and organizations for which data are incomplete were not included in this analysis.</p> <p>¹Please note that these numbers refer only to organizations for which data were available. The numbers do not necessarily represent the actual number of organizations in a given region.</p> <p>²CGC defines a "game session" as the period of time during which one or more bingo games are conducted by a single qualified organization.</p> <p>³Two organizations in Region 3 that paid approximately \$10,000 a month in rent for facilities used for activities other than charitable gaming were not included in this analysis. JLARC staff determined that there was no credible method for determining how much of these organizations' monthly rent could be attributed solely toward their charitable gaming activities. According to CGC staff, "it is also possible" that other organizations in Region 3 rent facilities on a monthly basis that may be used for activities other than charitable gaming. As a result, the average rent per session depicted for Region 3 may not be comparable to the average rent per sessions shown for the other regions.</p> <p>Source: JLARC staff analysis of data provided by the Charitable Gaming Commission.</p>			

Appendix C

Organization of the Charitable Gaming Commission



Note: Four new auditor positions granted to the Commission for FY 2003 are not incorporated in this chart, but would be situated in the Central Office (Region 1).

Source: Charitable Gaming Commission.

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Appendix D

(Note: Response tallies are provided in bold type near each check-box or blank.)

* This questionnaire is to be completed by the ACTING GAME MANAGER or, if the Game Manager is unavailable, an organization member **DIRECTLY INVOLVED IN THE ORGANIZATION OR MANAGEMENT** of charitable gaming activities.

Name of Organization	
Charitable Gaming Commission ID Number	
Name of Person Completing Survey	
Telephone Number of Person Completing Survey	

BACKGROUND

1. Which of the following categories best describes your organization? (Please select one.)
(N = 351)

☐ Charitable (62) ☐ Educational (30) ☐ Volunteer Fire/Rescue Depart (62)
☐ Veterans (63) ☐ Religious (9) ☐ Other: _____ (17)
☐ Community (28) ☐ Fraternal (80)

2. Are you the current Game Manager for the organization's charitable gaming activities?
(N = 348)

☐ Yes (247)

*How long have you been the Game Manager? (Average = 5.14 years)
(Range = 6 weeks to 29 years)*

☐ No (101) *What is your primary role in charitable gaming?* _____

3. How long has your organization held a permit with the Charitable Gaming Commission?
(N = 351)

☐ Less than 1 year (20) ☐ 1 –3 years (31) ☐ More than 3 years (300)

4. If your organization has just recently begun gaming, were you satisfied with the CGC's assistance during the initial stages of your gaming efforts?
(N = 99)

☐ Yes (53) ☐ No (8) ☐ Not sure (8) ☐ No assistance was provided (30)

5. Does your organization currently rent or own your gaming premises?
(N = 347)

☐ Own (229) ☐ Rent (89) ☐ Other: _____ (29)

If renting, who does your organization rent from? _____

If renting, do you feel that your rental agreement is fair?

(N = 66)

☐ Yes (60) ☐ No (6)

6. What types of gaming activities does your organization offer?

☐ Bingo (271) ☐ Pull-tabs (274) ☐ Raffles (186) ☐ Other: _____(5)

7. What was your gross charitable gaming revenue for the FY ending September 30, 2001?
(N = 342)

☐ Less than \$25,000 (23) ☐ \$25,000 to \$150,000 (108)
☐ \$150,000 to \$500,000 (103) ☐ Over \$500,000 (108)

CHARITABLE GAMING REGULATIONS

8. Carefully read the following statements and indicate the degree to which you agree or disagree with them in the appropriate box to the right. Please check only one box.

Statement	Agree	Somewhat Agree	Somewhat Disagree	Disagree	Don't Know
<p>“The requirements to obtain a permit from the CGC are fairly and uniformly applied to different organizations (provided that they are not “exempt” from these requirements by charitable gaming legislation).” (N = 346) <u>If you “disagree,” please explain:</u></p>	<input type="checkbox"/> (201)	<input type="checkbox"/> (47)	<input type="checkbox"/> (7)	<input type="checkbox"/> (14)	<input type="checkbox"/> (77)
<p>“Decisions regarding new or renewal permit applications of organizations are made by the CGC in a timely manner.” (N = 351) <u>If you “disagree,” please explain:</u></p>	<input type="checkbox"/> (253)	<input type="checkbox"/> (49)	<input type="checkbox"/> (10)	<input type="checkbox"/> (18)	<input type="checkbox"/> (21)
<p>“The CGC provides enough information to my organization to allow us to sufficiently meet their regulatory requirements.” (N = 350) <u>If you “disagree,” please explain:</u></p>	<input type="checkbox"/> (235)	<input type="checkbox"/> (78)	<input type="checkbox"/> (20)	<input type="checkbox"/> (14)	<input type="checkbox"/> (3)
<p>“CGC regulations are applied to charitable</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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gaming organizations fairly and uniformly.” (187) (42) (15) (26) (58)
(N = 328)

If you “disagree,” please explain:

“Enforcement of CGC regulations is carried out in an appropriate manner.” ☐ ☐ ☐ ☐ ☐
(218) (55) (8) (14) (54)
(N = 349)

If you “disagree,” please explain:

“CGC regulations help maintain a level playing field for all charitable organizations.” ☐ ☐ ☐ ☐ ☐
(205) (50) (14) (30) (28)
(N = 327)

If you “disagree,” please explain:

ASSISTANCE TO CHARITABLE GAMING ORGANIZATIONS

9. Has an inspector from the CGC ever visited your organization? (N = 351)

☐ Yes (284) ☐ No (46) ☐ Not Sure (21)

If you answered “yes:”

Were these inspections conducted in a professional manner?
(N = 281)

☐ Yes (279) ☐ No (3) *If “no,” please comment:*

What were the results of the inspection?

10. Has your organization ever been audited by the CGC?
(N = 347)

☐ Yes (153) ☐ No (142) ☐ Not sure (52)

If you answered “yes:”

Were these audits conducted in a professional manner?
(N = 149)

☐ Yes (145) ☐ No (4) *If “no,” please comment:*

What were the results of the audit?

11. How frequently do you ask for assistance from the CGC? (Check one.)
(N = 350)

☐ Every month (10)

- ☐ Every few months **(50)**
- ☐ Once or twice a year **(170)**
- ☐ Less frequently than once a year **(81)**
- ☐ Never **(39)** *(If answering "Never," please skip to question #15.)*

12. What types of assistance do you seek from the CGC? (Check one or more.)

- ☐ Assistance in completing a permit application (new or renewal) **(135)**
- ☐ Interpretation of gaming regulations **(193)**
- ☐ Questions about proper record keeping **(117)**
- ☐ Questions about the management of charitable gaming finances **(44)**
- ☐ Concerns about possible illegal activity occurring within the games **(21)**
- ☐ Questions about landlords **(8)**
- ☐ Requests for making changes to the provisions in my organization's permit **(58)**
- ☐ Questions about submitting annual and/or quarterly reports to the CGC **(112)**
- ☐ Inquiries regarding the status of my organization's permit application (new or renewal) **(90)**
- ☐ Other: _____ **(17)**

13. When requested, did the CGC provide timely assistance to your organization?
(N = 312)

- ☐ Yes **(296)** ☐ No **(16)** *If "no," please comment:*

14. Do you feel that the CGC provides adequate assistance to your organization, when requested? (N = 313)

- ☐ Yes **(300)** ☐ No **(13)** *If "no," please comment:*

15. Are there questions or concerns related to charitable gaming within your organization that have not been adequately addressed by the CGC? (N = 343)

- ☐ Yes **(38)** ☐ No **(305)**

16. Have you or anyone from your organization attended the regional trainings offered to organizations by the CGC? (N = 351)

- ☐ Yes **(211)** ☐ No **(106)** ☐ I have never heard of regional training opportunities **(34)**

If "yes," how would you rate the utility of this training?
(N = 211)

- ☐ Useful **(137)** ☐ Somewhat useful **(67)** ☐ Not at all useful **(7)**

17. Do you feel that there is an adequate forum for public input concerning CGC operations?
(N = 340)

☐ Yes (128) ☐ No (61) ☐ Don't know (151)

USE OF PROCEEDS TO CHARITY

18. Do you feel that your organization is better able to raise funds for charitable purposes as a result of the CGC's oversight of your gaming activities? (N = 306)

☐ Yes (203) ☐ No (103) *If "no," please comment:*

OVERALL ASSESSMENT

19. Overall, how would you rate your organization's working relationship with the CGC?
(N = 352)

☐ Satisfactory (301)
☐ Somewhat Satisfactory (39)
☐ Somewhat Unsatisfactory (8)
☐ Unsatisfactory (4)

OTHER COMMENTS

20. If you have comments regarding the Charitable Gaming Commission that have not been addressed, please note them here:

Thank you for taking the time to complete this survey. If you have any questions, please contact Tracey Smith or Kirk Jonas at (804) 786-1258. Your participation is appreciated.

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Appendix E

CHARITABLE GAMING COMMISSION GAME OBSERVATION PROGRAM

INSPECTOR: _____ **REGION:** _____

NAME OF ORGANIZATION: _____ **CGC NO.** _____

MAILING ADDRESS: _____

GAME ADDRESS: _____

DATE OF INSPECTION: _____ **ARRIVAL TIME:** _____

I. PRELIMINARY OBSERVATIONS: (*Explain on reverse)

- | | | |
|--|--------|-------|
| a. Unauthorized gambling observed (poker, bingo, etc.) | Yes___ | No___ |
| b. All gaming equipment in working order | Yes___ | No___ |
| c. Electronic verification in use | Yes___ | No___ |
| d. Valid gaming permit posted | Yes___ | No___ |
| e. CGC complaint poster displayed | Yes___ | No___ |
| f. Gamblers Anonymous poster displayed | Yes___ | No___ |
| g. House rules posted or on program | Yes___ | No___ |
| h. All games and prize amounts listed on program | Yes___ | No___ |
| i. Total jackpot prizes \$1,000 or less | Yes___ | No___ |
| j. Regular game prizes \$100 or less | Yes___ | No___ |
| k. All gaming conducted within time limits | Yes___ | No___ |
| l. Admissions control procedure(s) is adequate (note type) | Yes___ | No___ |

Number of players present: Per organization _____ Per head count _____ Time _____
(Explain any difference on reverse)

FLOOR SALES OF EXTRA BINGO PAPER:

- | | | |
|--|--------|-------|
| a. Are sheets counted when given to the floor worker? | Yes___ | No___ |
| b. Are sheets counted when returned by the floor worker? | Yes___ | No___ |
| c. Is the money counted in the presence of the floor worker and cashier? | Yes___ | No___ |

INSTANT BINGO (Complete if instant bingo and seal cards are being sold)

- a. Is a flare posted for all games in play? Yes___ No___
- b. Are machines used? Yes___ No___
- c. Are cards removed from packing box and mixed thoroughly before being sold? Yes___ No___
- d. Are winning cards defaced when paid? Yes___ No___
- e. Are all winning cards, including free plays, used to reconcile? Yes___ No___
- f. If a deal is not sold out, are unsold cards being discarded? Yes___ No___
- g. Do floor workers sell cards? Yes___ No___
- h. Are there adequate controls to account for floor worker sales? Yes___ No___
- i. Is a record kept of all instant/seal card winners over \$250? Yes___ No___
- j. Is an Instant/Seal Card/Raffle schedule being maintained which lists the serial number, name, gross income, cash payouts, expected profit, cash on hand and overages/shortages? Yes___ No___

List deals in play:

<u>Name of Game</u>	<u>Manufacturer</u>	<u>Serial No.</u>	<u>Form No.</u>	<u>Gross \$</u>	<u>Payout \$</u>	<u>Profit \$</u>
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____

- k. Is a copy of a supplier's invoice on hand for each of the deals in play or in storage? Yes___ No___
- l. Is access to the storage area limited to certain members? Yes___ No___
- m. Does the landlord have access to the storage area? Yes___ No___

ELECTRONIC BINGO (Complete the following if electronic bingo devices are being used.)

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- | | | |
|--|--------|-------|
| a. Is a player required to input the numbers called? | Yes___ | No___ |
| b. Does a player have to physically notify caller of a BINGO? | Yes___ | No___ |
| c. Is the device programmed <u>on site</u> for 72 card faces or less per game? | Yes___ | No___ |
| d. Is a player allowed to reserve a device? | Yes___ | No___ |
| e. Is a player given a receipt showing number of faces purchased? | Yes___ | No___ |
| f. Are rentals and exchanges handled only by a volunteer member? | Yes___ | No___ |
| g. If a player wins on a machine, is the winner verified? | Yes___ | No___ |

VOLUNTEERS (Request a picture ID from each volunteer and list his/her name and assignment below)

- | | | |
|-----------|-----------|-----------|
| 1. _____ | 2. _____ | 3. _____ |
| 4. _____ | 5. _____ | 6. _____ |
| 7. _____ | 8. _____ | 9. _____ |
| 10. _____ | 11. _____ | 12. _____ |

- | | | |
|--|--------|-------|
| a. Does each volunteer state that they are a bona fide member or family member of a member of this organization?
(If not, list names of any non-members on reverse) | Yes___ | No___ |
| b. Does each volunteer have a picture ID on his/her possession? | Yes___ | No___ |
| c. Are any volunteer workers under age 18? | Yes___ | No___ |
| d. If yes to "c" above, does the organization have on file written permission from the parents/guardians giving consent to work? | Yes___ | No___ |
| e. Is any volunteer employed by, related to, or residing in the household of, the landlord? | Yes___ | No___ |

If volunteer workers are given food and non-alcoholic beverages, complete the following:

- | | | |
|---|--------|-------|
| a. Does the cost exceed \$8 a person? | Yes___ | No___ |
| b. How paid for? _____ | | |
| c. Do the workers sign for any food or drinks received? | Yes___ | No___ |

MISCELLANEOUS

- a. Are the "gross" proceeds from **all** games reflected

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on the daily reconciliation?

Yes___

No___

b. Is a record kept of regular, special, WTA and jackpot prizes paid?

Yes___

No___

c. Are all door prizes limited to \$25 each?

Yes___

No___

d. Is a record kept of all door prizes given out?

Yes___

No___

e. Decision Bingo Played?

Yes___

No___

Is Decision Bingo listed on program

Yes___

No___

If so, what is the attendance? _____ How many games played? _____

f. If other games besides bingo, instant bingo and seal cards are played (*i.e.*, progressive raffle or “treasure chest”), describe briefly. (Include the gross income, cash payout, expected profit and balance to be paid out to the winner).

Game Manager: _____
(Signature)

Date: _____

Inspector: _____
(Signature)

Date: _____

President/Commander: _____
(Name)

Phone: _____

Arrange to be provided or sent the following:

- Play sheet/Program for session observed with Instant Bingo reconciliation sheet.
- Reconciliation for session observed and the **“two”** previous sessions (***bingo*** and ***instant*** bingo reconciliation sheets)
- Copy of bank-validated deposit slip for session observed.
- Copies of any invoices for instant bingo/seal cards that were not available during visit.

COMPLAINTS RECEIVED SINCE LAST OBSERVATION: _____

NOTES:

Time of Departure: _____

Complaints resolved since last observation:

Follow up action:

No action _____

Full Audit _____

License/Administration _____

Mini-Inspection _____

Full Inspection _____

Enforcement _____

Reviewed by: _____

Incident No., if assigned: _____

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